D.O.

Dominions
(South African)
No. 2.

116

CORRESPONDENCE

[1922 – 1926]

RELATING TO THE

QUESTION OF

MINERAL CONCESSIONS

IN THE

BECHUANALAND PROTECTORATE.

(Continued by Dominions (South African) No. 4.)

2

DO 116/2

Dominions
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CORRESPONDENCE

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BECHUANALAND PROTECTORATE.

(Continued by Dominions (South African) No. 4.)

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CORRESPONDENCE

[1922–1926]

relating to the

QUESTION OF

MINERAL CONCESSIONS

IN THE

BECHUANALAND PROTECTORATE.

1493

No. 1.

THE HIGH COMMISSIONER to THE SECRETARY OF STATE.

(Received 10th January, 1922.)

[*Answered by No.* 3.]

(No. 1274.)

High Commissioner's Office, Cape Town,
20th December, 1921.

SIR,

I HAVE the honour to transmit herewith a copy of a despatch from the Resident Commissioner of the Bechuanaland Protectorate forwarding correspondence with the local Secretary of the British South Africa Company, in regard to a proposal by the Company to compound for a lump sum the annuities which they have hitherto paid to Chiefs Sebele II and Tshosa Sebego, and to discontinue the annuity of £50 hitherto paid to Chief Seboko.

2. I am not aware whether, in the event of a refusal by the British South Africa Company to continue all or any of these payments, the Chiefs—or His Majesty's Government on their behalf—would be in a position to enforce their claims, and it might perhaps be open to question whether Sebele II and Tshosa Sebego were well advised in declining to accept the Company's proposal for composition by a lump sum. It seems to me that, unless it is clear that the continued payment of the annuities could be enforced, the best course in the interests of these Chiefs might be for me to instruct the Resident Commissioner to explain the position to them and to endeavour to secure a reconsideration of their attitude, provided that the lump sums offered in composition were reasonably adequate in amount.

3. If such a settlement should be found desirable and practicable in the cases of Sebele and Tshosa, a similar arrangement would presumably be the most that could be hoped for in the case of Seboko.

4. I do not feel, however, that, pending some expression of your views, I could usefully take any action at this stage, especially as the British South Africa Company, in view of the last paragraph of the Government Secretary's letter of the 3rd instant to their local Secretary, may probably now decide to approach you direct.

I have, &c.,
ARTHUR FREDERICK,
High Commissioner.

Enclosure in No. 1.

(H.C. 319.)

Resident Commissioner's Office, Mafeking,
3rd December, 1921.

SIR,

I HAVE the honour to forward herewith for Your Royal Highness' information a copy of a letter addressed by the local Secretary of the British South Africa

Company, Cape Town, to the Government Secretary, together with a copy of the latter's reply thereto, on the subject of a proposal by the Company to compound for a lump sum the annual payments which it undertook in 1894 to pay to certain Chiefs of the Bechuanaland Protectorate with a view to allaying the discontent among them which might result from the disallowance of certain Concessions and consequent loss of income to them, and also to discontinue the payment of £50 per annum hitherto made in that respect to the Chief of the Bamalete.

2. In this connexion I would refer Your Royal Highness to the correspondence beginning with the Confidential letter addressed by the Under-Secretary of State for the Colonies to the Secretary of the British South Africa Company in London on the 11th December, 1894, and ending with the former's letter of the 12th December, 1894.*

I have, &c.,
J. C. MACGREGOR,
Resident Commissioner.

His Royal Highness
The High Commissioner,
Cape Town.

SIR, Cape Town, 9th June, 1921.

WITH reference to the Concessions held by the British South Africa Company in the Bechuanaland Protectorate, I have the honour to inform you that I am directed by my Board to approach you on the following matters in connexion therewith:—

1. With reference to the annuities of £225 and £180 a year for the Concessions known as the Riesle and Nicholls Concession and the Secheleland Concession respectively, paid to Sebele II, the Directors would be glad to know whether Sebele will consider the question of compounding the payments for a lump sum on favourable terms.

2. It is also suggested that the payment of £150 per annum to Tshosa Sebego might be compounded for a lump sum.

3. With regard to the annuity of £50 made to Ikaning, now to Seboko, his successor, as this payment was purely a *solatium* to Ikaning for the loss of revenue suffered by him through the disallowance of certain Concessions which he had granted, the Directors do not consider that the British South Africa Company is called upon to continue payment to Ikaning's successor after his death.

I may say that it was through an oversight that the payments have continued to be made since Ikaning's death.

I should be glad if you would kindly place these matters before His Honour for his consideration and approval for submission to the Chiefs concerned.

I have, &c.,
F. B. PHILIP,
Local Secretary.

The Government Secretary,
Mafeking.

Resident Commissioner's Office, Mafeking,
3rd December, 1921.

SIR,

I HAVE the honour to refer to your letter of the 9th June last, and to my acknowledgment thereof, dated the 8th July, on the subject of the annuities which the British South Africa Company is paying to certain Chiefs of the Bechuanaland Protectorate, and in reply, to inform you, by direction, that Sebele II (Chief of the Bakwena), and Tshosa Sebego (the Acting Chief of the Bangwaketse), state that, after consultation with their Councillors, they regret their inability to accept your Board's proposal to compound the payments for a lump sum.

Seboko, Chief of the Bamalete, states that his grandfather, Ikaning, died a quarter of a century ago, that from that date to this the payment of £50 per annum has been made to successive Chiefs of the Bamalete, viz., to his father Mokgosi, his uncle Baitlotli—who was Acting Chief of the Tribe during his minority—and later on to himself, and that he is therefore unable to accept the view, which comes to him as a great surprise, that this annuity was payable to his grandfather only and not to his successor.

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* Nos. 2 and 3 in African (South) No. 537.

Seboko, who is still a young man, further states that his Councillors and people tell him that they have hitherto regarded this annuity as an allowance by the British South Africa Company in respect of the construction of the railway line through their country and consider that, as the line is still in existence, the payment to him should continue.

The circumstances which led to this annuity being made have been explained to him: he adheres to the view, however, that this allowance is still payable to him just as it was paid to his predecessors, and, as it was originally granted by the British South Africa Company with a view to allaying discontent which might arise by reason of the disallowance of a certain Concession and consequent loss of income to the Chief, or, in other words, with the object of promoting friendly relations, which may not unfairly be taken to include the gratuitous grant of land on which the railway runs, the Resident Commissioner desires me to express the hope that payment thereof will be continued.

I am also to point out that the arrangement under which these allowances are paid to the Chiefs was arrived at in London in 1894, between the Secretary of State for the Colonies and the British South Africa Company, and that any change contemplated in the terms thereof would have to be submitted to the Secretary of State.

I have, &c.,
J. ELLENBERGER,
Government Secretary.

The Local Secretary,
British South Africa Company,
Cape Town.

2900

No. 2.

THE HIGH COMMISSIONER to THE SECRETARY OF STATE.

(Received 19th January, 1922.)

[*Answered by No.* 3.]

(No. 1315.)

SIR, High Commissioner's Office, Cape Town, 30th December, 1921.

WITH reference to my despatch No. 1274 of the 20th December,* I have the honour to transmit herewith a copy of a despatch from the Resident Commissioner of the Bechuanaland Protectorate forwarding a copy of a further letter from the local Secretary of the British South Africa Company in regard to the proposal by the Company to compound for a lump sum the annuities which they hitherto paid to Chiefs Sebele II and Tshosa Sebego and discontinue the annuity of £50 hitherto paid to Chief Seboko.

I have, &c.,
ARTHUR FREDERICK,
High Commissioner.

Enclosure in No. 2.

(H.C. 331.)

Resident Commissioner's Office, Mafeking,
19th December, 1921.

SIR,

IN continuation of my despatch No. 319 of the 3rd December,† I have the honour to transmit herewith, for Your Royal Highness' information, a copy of a further letter from the local Secretary, British South Africa Company, Cape Town, regarding the Company's proposal to compound for a lump sum the annual payments made by it to certain Chiefs of the Bechuanaland Protectorate.

I have, &c.,
J. C. MACGREGOR,
Resident Commissioner.

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* No. 1. † Enclosure in No. 1.

SIR, Cape Town, 9th December, 1921.

I HAVE the honour to acknowledge the receipt of your letter J. 261 of the 3rd instant, regarding certain annuities which the British South Africa Company are paying to Chiefs of the Bechuanaland Protectorate, and note that Chief Sebele II and Tshosa Sebego regret their inability to accept the Board's proposal to compound the payments for a lump sum.

It is also noted that the Resident Commissioner hopes that the payment of £50 per annum to Seboko, Chief of the Bamalete, should be continued for the reasons given, and I am writing to the Board in London for instructions in the matter.

I have, &c.,
F. B. PHILIP,
Local Secretary.

The Government Secretary,
Mafeking.

1493

No. 3.

THE SECRETARY OF STATE to THE HIGH COMMISSIONER.

[*Answered by No.* 4.]

(Confidential.)

SIR, Downing Street, 24th April, 1922.

I HAVE the honour to acknowledge the receipt of your Royal Highness' despatches No. 1274 of the 20th December, and No. 1315 of the 30th December, 1921,* regarding the proposal of the British South Africa Company to compound for a lump sum the annuities which they have hitherto paid to Chiefs Sebele II and Tshosa Sebego, and to discontinue the annuity of £50 paid to Chief Seboko.

2. I had thought that the British South Africa Company might approach me direct on the subject, but I have not so far received any communication from them, and I gather from your telegram of the 13th March† that you are anxious for a reply.

3. The matter has involved a good deal of investigation since, though the original arrangement with regard to the payment of certain allowances to the Chiefs Batwen, Ikaning and Sebele in respect of disallowed Concessions is explained in the correspondence with the Company to which the Resident Commissioner refers,‡ that correspondence does not throw any light on the origin of the annuity of £180 which it is stated is being paid to Sebele II, in respect of the Secheleland Concession. It appears, however, from the enclosures to Lord Milner's despatch to Mr. Chamberlain, No. 937 of the 6th September, 1902,§ that this payment was made to Sebele in respect of the modified form of the Concession which Lord Ripon stated in his despatch No. 16 of the 15th January, 1895,‖ that he was prepared to approve, and which had subsequently been acquired by the British South Africa Company. According to that despatch the Concessionaires were to be allowed the sole right for a period of five years from a date to be fixed, to prospect for precious stones and metals within Sebele's territory and, within that period, to mark off an area of ten miles square for mining operations. Lord Selborne, in the last paragraph of his despatch No. 355 of the 7th June, 1909,¶ states that "it appears that no date was ever decided upon and that the Concession was tacitly allowed to expire." I am not clear, however, that this can be the case since it appears that the British South Africa Company are still paying Sebele II an annual sum of £180 in respect of the Concession. Now that this fact has been brought to your notice it will be necessary to arrive at some conclusion as to whether the Concession is to be regarded as still alive, and I shall be glad to have your observations on this point in due course. If the Concession is to be so regarded, the Company must obviously continue to make the necessary annual payments during the further life of the Concession, but it is not clear in any case how commutation could be effected without exceeding the limitation of time imposed by the modification introduced in 1895.

4. As regards the other payments in question it will be seen on reference to the Company's letter of the 12th December, 1894,** that the allowances of £150 to

* Nos. 1 and 2. † 12191/22: reminder; not printed. ‡ Nos. 2 and 3 in African (South) No. 587. § No. 320 in African (South) No. 702. ‖ No. 5 in African (South) No. 537. ¶ No. 145 in African (South) No. 932. ** No. 3 in African (South) No. 587.

Batwen, £50 to Ikaning and £225 to Sebele were granted in respect of certain monopolies not open to recognition and also, in the case of the grants to Batwen and Sebele, in respect of the Kanya and the Riesle and Nicholls land grants respectively. In view of the fact, however, that the latter Concessions had not at the time been definitely disallowed, the Chiefs concerned were merely informed generally that the *solatium* was being made in respect of disallowed Concessions (*vide* Mr. Chamberlain's despatch of 15th May, 1896*). Subsequently both the Kanya and the Riesle and Nicholls Concessions were acquired by the British South Africa Company, and I would invite attention in this connexion to the correspondence mentioned in the margin.† On the transfer of the Concessions the Company would have become liable to pay the rents of £100 per annum and £200 per annum due under them to the Chiefs Batwen and Sebele, but it appears that on the basis adopted in the case of the payments to Sebele explained in the eighth enclosure to Lord Milner's despatch of the 6th September, 1902, to which I have referred, the rents in both cases must be regarded as covered by the annual payments of £150 and £225 which the Company had previously agreed to make.

5. You will observe from the correspondence in African 574 referred to above, that it was part of the arrangement under which certain areas surrendered by the Chiefs were handed over to the British South Africa Company, that the Company should acquire the Kanya and the Riesle and Nicholls Concessions, and in view of the nature of the consideration which the Company received, and the fact that these two Concessions are perpetual, I think that the Company must be regarded as under an obligation to continue the payments, and that the Protectorate Administration should therefore not take any steps which would suggest to the Chiefs that the continuance of the allowances is regarded by the Government as a doubtful obligation on the part of the Company.

6. As regards the allowance hitherto paid to Seboko, it is natural that the Chief should be unable to accept the view that the allowance which Ikaning's successors have continuously drawn for the last twenty-five years was personal to Ikaning. There is, indeed, nothing in the original arrangement with the Company to suggest that the allowance awarded to Ikaning differed as regards duration from those awarded to Batwen and Sebele and with respect to those allowances no question has been raised of their being limited to the lives of the original grantees.

I have, &c.,
WINSTON S. CHURCHILL.

60215

No. 4.

THE HIGH COMMISSIONER to THE SECRETARY OF STATE.

(Received 5th December, 1922.)

[*Answered by No.* 6.]

(Confidential.)

MY LORD DUKE, High Commissioner's Office, Pretoria, 15th November, 1922.

WITH reference to Mr. Churchill's Confidential despatch of the 24th April last,‡ I have the honour to transmit herewith a copy of further correspondence with the Resident Commissioner of the Bechuanaland Protectorate on the subject of the proposal of the British South Africa Company to compound for a lump sum the annuities which the Company has hitherto paid to Chiefs Sebele II and Tshosa Sebego, and to discontinue the annuity of £50 paid to Chief Seboko.

2. I beg to invite Your Grace's attention to the 6th paragraph of Mr. Ellenberger's despatch of the 5th October and the 4th paragraph of my reply of the 14th instant respecting the Secheleland Concession, and I should be glad to learn in due course whether Your Grace considers it necessary or expedient that any action should be taken with a view to fixing a date from which the five-year period mentioned in the Secheleland Concession is to be reckoned.

I have, &c.,
ARTHUR FREDERICK,
High Commissioner.

* No. 39 in African (South) No. 697. † Nos. 37, 83, and 195 in African (South) No. 574 and No. 72 in African (South) No. 694. ‡ No. 3.

Enclosure 1 in No. 4.

(H.C. 74.)

Resident Commissioner's Office, Mafeking.
1st March, 1922.

SIR,

WITH reference to Your Royal Highness' despatch No. 2859 of the 20th December,* and previous correspondence regarding the proposal by the British South Africa Company to compound for a lump sum the annuities which they have hitherto paid to Chiefs Sebele II and Tshosa Sebego, and to discontinue the annuity of £50 hitherto paid to the Chief Seboko, I have the honour to enclose herewith for Your Royal Highness' information a copy of a letter from the Local Secretary of the British South Africa Company in Cape Town which contained a message and a cheque for £50 with the request that they be delivered to Seboko.

2. In view of Your Royal Highness' despatch No. 1274 of the 20th December last to the Secretary of State,† I think it better to submit the matter to Your Royal Highness for instructions before taking any other steps therein.

3. The receipt of Mr. Philip's letter has been acknowledged, and he has been told that the matter is receiving attention.

I have, &c.,
J. C. MACGREGOR,
Resident Commissioner.

His Royal Highness,
The High Commissioner,
Cape Town.

(G. 136/41.)

Cape Town, 20th February, 1922.

SIR,

I HAVE the honour to refer you to your letter of the 3rd December last, on the subject of the annuities paid by the British South Africa Company to certain Chiefs of the Bechuanaland Protectorate.

With regard to the payment to Seboko, I am instructed to inform you that the Board of the British South Africa Company does not accept the view that the subsidy had any connexion with the construction of the Railway, and maintains that it was purely a *solatium* to Ikaning to compensate him for the loss [of] revenue suffered by him through the disallowance by the Government of certain Concessions which he had granted. The Board further maintains that it can stop the payment if so disposed, and also that it would be unnecessary to obtain the concurrence of the Colonial Office in such action.

I am, however, to state that the Directors in the present circumstances do not wish to raise a controversy over a comparatively small point, and have authorized me to continue the subsidy of £50 to Seboko for one year without prejudice to any decision to which the Board may come to at the end of that period.

I enclose, herewith, cheque for £50, and should be glad if you would kindly cause the amount to be handed over to Seboko with the foregoing message.

I have, &c.,
F. B. PHILIP,
Local Secretary.

The Government Secretary,
Mafeking.

Enclosure 2 in No. 4.

(Confidential.)
(No. 1077.)

High Commisioner's Office, Cape Town.
1st July, 1922.

SIR,

WITH reference to my despatch No. 875 of the 25th April,* and previous correspondence, I have the honour to transmit to you, for your consideration and observations, a copy of a despatch from the Secretary of State‡ regarding the proposals of the British South Africa Company to compound for a lump sum the

* Not printed. † No. 1. ‡ No. 3.

annuities which they have hitherto paid to Chiefs Sebele II and Tshosa Sebego, and to discontinue the annuity of £50 paid to Chief Seboko.

2. The documents enclosed in Lord Milner's despatch to Mr. Chamberlain No. 937 of the 6th September, 1902,* to which reference is made in the 3rd paragraph of the Secretary of State's despatch, were the following:—

3rd July, 1899, Despatch No. 53 from Resident Commissioner to High Commissioner.
28th August, 1900, Telegram from Acting Resident Commissioner to High Commissioner.
31st August, 1900, Telegram from High Commissioner to Resident Commissioner.
11th June, 1901, Despatch No. 144 from Acting Resident Commissioner to High Commissioner.
11th July, 1901, Letter from British South Africa Company, Cape Town, to Imperial Secretary.
13th March, 1902, Despatch No. 17 from Resident Commissioner to High Commissioner.
14th March, 1902, Despatch No. 18 from Resident Commissioner to High Commissioner.
4th September, 1902, Despatch No. 100 from High Commissioner to Resident Commissioner.
4th September, 1902, Letter from Imperial Secretary to British South Africa Company, Cape Town.

The statement made in the last paragraph of Lord Selborne's despatch to the Secretary of State No. 355 of the 7th June, 1909† (see his Lordship's despatch to the Resident Commissioner No. 20/47 of the 25th August, 1909), was apparently based upon a semi-official letter dated the 10th May, 1909, from Mr. Barry May to Mr. (now Sir Cecil) Rodwell.

3. The letter from the British South Africa Company to the Colonial Office of the 12th December, 1894,‡ of which mention is made in the 4th paragraph of Mr. Churchill's despatch, is printed, with other correspondence relating to Concessions in the Bechuanaland Protectorate, in the Colonial Office White Book African (South) No. 537. A copy of that book, which also contains Mr. Chamberlain's despatch of the 15th May, 1896, is doubtless on record in your Office. The other correspondence mentioned in the margin of the 4th paragraph of Mr. Churchill's despatch consists of§:—

24th January, 1899, letter from British South Africa Company to Colonial Office.
17th March, 1899, letter from Colonial Office to British South Africa Company.
15th June, 1899, letter from British South Africa Company to Colonial Office.
2nd August, 1901, despatch Confidential (1) from High Commissioner to Secretary of State.

I presume that copies of these documents are also on record at Mafeking.

4. The correspondence referred to in the 5th paragraph of Mr. Churchill's despatch consists of the three letters mentioned above which were exchanged between the British South Africa Company and the Colonial Office in 1899.

I have, &c.,
ARTHUR FREDERICK,
High Commissioner.

His Honour
The Acting Resident Commissioner
of the Bechuanaland Protectorate.

Enclosure 3 in No. 4.

(Confidential.)

Resident Commissioner's Office, Mafeking.
5th October, 1922.

SIR,

I HAVE the honour to acknowledge the receipt of Your Royal Highness' Confidential despatch No. 1077 of the 1st July, transmitting for my consideration and

* No. 320 in African (South) No. 702. † No. 145 in African (South) No. 932. ‡ No. 3 in African (South) No. 537. § Nos. 37, 83 and 185 in African (South) No. 574 and No. 72 in African (South) No. 604.

observations a copy of a despatch from the Secretary of State regarding the proposals of the British South Africa Company to compound, for a lump sum, the annuities which they have hitherto paid to Chief Sebele II and Tshosa Sebego, and to discontinue the annuity of £50 paid to Chief Seboko.

2. Of the documents enumerated in the first portion of paragraph 2 of Your Royal Highness' despatch, I can only trace the first three mentioned at the top of the second page, and Lord Selborne's despatches mentioned in the second portion of that paragraph. A copy of the enclosures to the Resident Commissioner's despatch No. 53 of the 3rd July, 1899, was forwarded to the Resident Commissioner under cover of the Imperial Secretary's note of the 1st August, 1903, and is in my possession.

3. I have also a copy of the Colonial Office White Book African (South) No. 537, referred to in paragraph 3 of Your Royal Highness' despatch, but no copies of the correspondence mentioned in the last part thereof except of the High Commissioner's despatch Confidential (1) of the 2nd August, 1901, to the Secretary of State.

4. As regards the origin of the annuity of £180 hitherto paid by the British South Africa Company to Sebele II, I would refer Your Royal Highness to paragraphs 11-16 inclusive of Lord Milner's despatch No. 100 of the 4th September, 1902,* to the Resident Commissioner, and to the latter's despatch No. 89 of the 13th August, 1903,† covering a copy of an Agreement signed by Sebele, Chief of the Bakwena (the grandfather of Sebele II), and Mr. A. W. Beadle, as representing the British South Africa Company.

5. The Secheleland Concessions (*b*), (*c*) and (*d*) were disallowed and in terms of clause 2 of the Agreement above referred to, the sum of £180 per annum has been paid to successive Chiefs of the Bakwena tribe as from the 1st day of January, 1903, in respect of the Secheleland Concession (*a*) in the modified form in which it was approved by the Secretary of State, in the despatch quoted in the margin.

Secretary of State to High Commissioner, Despatch No. 16, 15th January, 1895.‡ M. under Sebele, para. IV.

6. I cannot find any record that the date was ever fixed from which the five years were to begin during which the Concessionaires were to have the sole right to prospect for precious stones and metals within Sebele's territory and within that period to mark off an area for mining operations not exceeding ten miles square, nor has the Assistant Commissioner for the Southern District of the Bechuanaland Protectorate any recollection of the date ever having been fixed, and in view of the Agreement of the 6th August, 1903, and of the fact that the Chiefs of the Bakwena have, as far as I know, received regularly the £180 per annum due under that Agreement, the Concession must be regarded as still alive, and I would suggest that the date of commencement of the five years be fixed without further delay.

7. The instructions contained in paragraph 5 of the Secretary of State's Confidential despatch of the 24th April, 1922,§ have been noted.

8. In conclusion I desire to express to Your Royal Highness my regret at the delay which has occurred in answering your despatch.

I have, &c.,
J. ELLENBERGER,
Acting Resident Commissioner.

His Royal Highness,
The High Commissioner,
Pretoria.

Enclosure 4 in No. 4.

(Confidential.)

Resident Commissioner's Office, Mafeking,
11th November, 1922.

SIR,

IN further reference to my Confidential despatch of the 5th October, on the subject of the proposals of the British South Africa Company to compound for a lump sum the annuities which they have hitherto paid to Chiefs Sebele II and Tshosa Sebego, and to discontinue the annuity of £50 paid to Chief Seboko, I have

* Enclosure 8 in No. 320 in African (South) No. 702. † Enclosure in No. 333 in African (South) No. 717. ‡ No. 5 in African (South) No. 537. § No. 3.

the honour to transmit a copy of a letter which I have received from the Local Secretary of the British South Africa Company, Cape Town, in regard to the payment of the annuity of £50 to Chief Seboko, and to request that Your Royal Highness will be so good as to instruct me as to the reply to be sent. Mr. Philip's letter has been acknowledged, and he has been told that the matter is receiving attention.

I have, &c.,
J. ELLENBERGER,
Acting Resident Commissioner.

His Royal Highness
The High Commissioner,
Pretoria.

Cape Town, 6th November, 1922.

Subsidy—Seboko Makgosi.

SIR,

I HAVE the honour to refer to my letter of the 20th February last, and your reply of the 1st March, 1922, on the subject of future payments of subsidy to Chief Seboko, and should be glad if you would kindly let me have your views.

I have, &c.,
F. B. PHILIP,
Local Secretary.

The Government Secretary,
Mafeking, B.P.

Enclosure 5 in No. 4.

(Confidential.)

High Commissioner's Office, Pretoria.
14th November, 1922.

SIR,

I HAVE the honour to acknowledge the receipt of your Confidential despatch of the 5th October, regarding the proposal of the British South Africa Company to compound for a lump sum the annuities which the Company has hitherto paid to Chiefs Sebele II and Tshosa Sebego, and to discontinue the annuity of £50 paid to Chief Seboko. I have also received your further despatch of the 11th instant.

2. In the absence of any reference in the letters from the Local Secretary of the Company, of the 20th February, and the 6th November, to the annuities payable to Sebele and Tshosa Sebego, it may perhaps be assumed that the Company does not intend to press, at any rate for the present, for the adoption of the suggestion that the annuities payable to these two Chiefs should be compounded for a lump sum payment.

3. As regards the allowance of £50 hitherto paid to Seboko, I think you might now inform the Company's Local Secretary, in reply to his letter No. G.136/41 of the 20th February, that the matter has been referred to the Secretary of State, who has expressed the opinion that it is natural that Seboko should be unable to accept the view that the allowance which Ikaning's successors have continuously drawn for the last twenty-five years was personal to Ikaning. You might point out that there was indeed nothing in the original arrangement with the Company to suggest that the allowance awarded to Ikaning differed as regards duration from those awarded to Batwen or Sebele, and that with respect to those allowances no question has been raised of their being limited to the lives of the original grantees. You might add that, in all the circumstances, the Protectorate Administration does not feel able to make any statement to Seboko which could suggest to him that the continuance of the allowance is regarded by the Government as a doubtful obligation on the part of the Company, and that if the Company still wishes you to hand to Seboko the cheque for £50 which accompanied the Local Secretary's letter of the 20th February, you will be prepared to do so on the above understanding.

4. I will communicate with the Secretary of State in regard to the suggestion made in the 6th paragraph of your despatch of the 5th October, that a date of commencement of the five-year period referred to in the Secheleland Concession (*a*) should

be fixed without further delay, but as at present advised I am inclined to think that, although the Concession should be regarded as still alive so long as the annual payment of £180 continues to be made to the Chief, there is no strong reason why the Company should be pressed by the Government to fix a date for the commencement of the five-year period named in the Concession.

I have, &c.,
ARTHUR FREDERICK,
High Commissioner.

His Honour
The Acting Resident Commissioner
of the Bechuanaland Protectorate.

62609

No. 5.

THE HIGH COMMISSIONER to THE SECRETARY OF STATE.

(Received 19th December, 1922.)

(Confidential.)

MY LORD DUKE, High Commissioner's Office, Pretoria, 25th November, 1922.

WITH reference to my Confidential despatch of the 15th November,* I have the honour to enclose, for your information, a copy of a Confidential despatch from Acting Resident Commissioner, Mafeking, on the subject of the proposal of the British South Africa Company to compound for a lump sum the annuities which it has hitherto paid to Chiefs Sebele II and Tshosa Sebego, and to discontinue the annuity of £50 paid to Chief Seboko.

I have, &c.,
ARTHUR FREDERICK,
High Commissioner.

Enclosure in No. 5.

(Confidential.)

Resident Commissioner's Office, Mafeking,
21st November, 1922.

SIR,

I HAVE the honour to refer to Your Royal Highness' Confidential despatch of the 14th November† regarding the proposal of the British South Africa Company to compound for a lump sum the annuities which it has hitherto paid to Chiefs Sebele II and Tshosa Sebego, and to discontinue the annuity of £50 paid to Chief Seboko.

2. I have noted paragraphs 2 and 4 of the despatch, and am communicating with the Company's Local Secretary as directed in paragraph 3 thereof, omitting however the last five lines beginning with the words "and that if the Company still wish you to hand to Seboko . . . ." my reason for this being that the cheque for £50 which accompanied the Local Secretary's letter of the 20th February was delivered to Seboko in July on my instructions, on receipt of the Secretary of State's Confidential despatch of the 24th April,‡ a copy of which was transmitted to me under cover of Your Royal Highness' Confidential despatch, No. 1077, of the 1st July. I regret that I should have omitted to inform Your Royal Highness that I had done so.

I have, &c.,
J. ELLENBERGER,
Acting Resident Commissioner.

His Royal Highness,
The High Commissioner,
Pretoria.

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* No. 4. † Enclosure 5 in No. 4. ‡ No. 3.

60215

No. 6.

THE SECRETARY OF STATE to THE HIGH COMMISSIONER.

[*Answered by No.* 14.]

(Confidential.)

SIR, Downing Street, 21st December, 1922.

I HAVE the honour to acknowledge the receipt of Your Royal Highness' Confidential despatch of the 15th of November,* transmitting copies of further correspondence regarding the proposal of the British South Africa Company to compound for a lump sum the annuities which the Company has hitherto paid to Chiefs Sebele II and Tshosa Sebego, and to discontinue the annuity of £50 paid to Chief Seboko.

2. With regard to the point referred to in the second paragraph of your despatch I do not think it necessary in present circumstances for you to take any action with a view to fixing a date from which the five-year period mentioned in the Secheleland Concession is to be reckoned.

I have, &c.,
DEVONSHIRE.

11750

No. 7.

THE HIGH COMMISSIONER to THE SECRETARY OF STATE.

(Received 6th March, 1923.)

(Confidential.)

High Commissioner's Office, Cape Town,
MY LORD DUKE, 13th February, 1923.

I HAVE the honour to transmit herewith a copy of a despatch from the Resident Commissioner of the Bechuanaland Protectorate with reference to the desire of Mr. B. J. van den Heever to enter into an agreement with Chief Seboko and his people to prospect for minerals in the Bamalete Reserve.

2. I also enclose a copy of my reply.

I have, &c.,
ARTHUR FREDERICK,
High Commissioner.

Enclosure 1 in No. 7.

(Confidential.)

Resident Commissioner's Office, Mafeking,
SIR, 7th February, 1923.

I HAVE the honour to transmit copies of two letters which have been received from a Mr. B. J. van den Heever of Ramoutsa who desires to enter into an agreement with Chief Seboko and his people to prospect for minerals in the Bamalete Reserve, and I should be glad to receive Your Royal Highness' instructions in the matter.

2. The paragraph numbered 23 headed "C. Under Ikaning" of Lord Ripon's despatch to the High Commissioner† (then Sir Henry Lock) shows that no concessions were recognized by the Bechuanaland Protectorate Concessions Commission in Chief Ikaning's territory, to whom Chief Seboko is the successor.

3. I would next refer Your Royal Highness to Lord Harcourt's Confidential despatch to the High Commissioner,‡ in paragraph 5 of which he describes the three classes of claims to concessions made by the British South Africa Company, the present application coming under (*b*) "to its claims to preference and assistance in obtaining further concessions," Lord Harcourt's opinion in regard to this is to be found in paragraph 15 of the same despatch.

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* No. 4. † No. 5 in African (South) No. 537. ‡ No. 107 in African (South) No. 969.

4. I have so far heard nothing from the Chief Seboko on the subject and of course his consent would have to be officially notified before anything was done.

I have, &c.,
J. C. MACGREGOR,
Resident Commissioner.

Ramoutsa, 16th January, 1923.

SIR,

WILL you please inform me whether you will be kind enough to sanction an agreement to prospect for minerals between Chief Seboko, Ramoutsa, and myself in the event of he and his people being agreeable.

I have, &c.,
B. J. VAN DEN HEEVER.

I have an option to prospect over Mr. Richard Transfeldt's ground.

Ramoutsa, 3rd February, 1923.

SIR,

I AM anxiously awaiting reply to my letter a little while ago in connexion with the Agreement between Chief Seboko and myself to prospect his area and the right to purchase the mineral rights in the event of any discovery. Seboko and his people have provisionally agreed to this agreement and only await your reply to me *re* sanction.

I am expecting some engineers here at the end of the month to inspect Mr. Transfeldt's ground and will esteem it a favour if you will kindly let me know at once as I would like to have all necessary papers in order.

Thanking you in anticipation,
I am, &c.,
B. J. VAN DEN HEEVER.

Enclosure 2 in No. 7.

(Confidential. No. 345.)

High Commissioner's Office, Cape Town,
13th February, 1923.

SIR,

I HAVE the honour to acknowledge the receipt of your Confidential despatch of the 7th February forwarding a copy of two letters from Mr. B. J. van den Heever with reference to his desire to enter into an agreement with Chief Seboko and his people to prospect for minerals in the Bamalete Reserve.

I think that in replying to Mr. van den Heever you might draw his attention to the provisions of section 45 of the Proclamation of the 10th June, 1891,* and you might add that in present circumstances it is very unlikely that the Secretary of State would feel able to approve of any such concession.

I observe that in his letter of the 16th January, Mr. van den Heever states that he has an "option to prospect over Mr. Transfeldt's ground." I should be glad if you could furnish any information as to the land over which he has obtained the option, and by whom and under what authority the option was granted.

I have, &c.,
ARTHUR FREDERICK,
High Commissioner.

His Honour
The Resident Commissioner
of the Bechuanaland Protectorate.

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* Enclosure 1 in No. 17 in African (South) No. 447.

17632

No. 8.

THE HIGH COMMISSIONER to THE SECRETARY OF STATE.

(Received 9th April, 1923.)

[*Answered by No.* 10.]

(No. 301.)

High Commissioner's Office, Cape Town, 21st March, 1923.

MY LORD DUKE,

I HAVE the honour to transmit herewith a copy of a despatch which I have addressed to the Resident Commissioner of the Bechuanaland Protectorate on the subject of the Mineral Concession, dated the 25th July, 1893, granted by Chief Khama to the British South Africa Company. I also enclose a copy of the documents enumerated in the margin of my despatch.

I have, &c.,
ARTHUR FREDERICK,
High Commissioner.

Enclosure in No. 8.

(No. 726.)

High Commissioner's Office, Cape Town.
20th March, 1923.

SIR,

ON the occasion of your recent visit to Cape Town you handed to the Imperial Secretary certain documents on the subject of the Mineral Concession granted by Chief Khama to the British South Africa Company.

Copy of Concession, Minute, Mr. Minchin, 17th June, 1920.
Letter, Lt.-Col. Daniel, 13th August, 1920.
To Legal Adviser, 5th March, 1923.
From Legal Adviser, 16th March, 1923.

I return those documents herewith and append copies of Minutes to and from my Legal Adviser, who before giving his opinion enjoyed the advantage of discussing with you here the position of the Bamangwato in respect of this Concession.

You will doubtless inform Chief Sekgoma of the opinion expressed by Mr. Feetham. I would suggest that, in the event of the Bamangwato being desirous of taking steps to terminate the Concession, it might perhaps be advisable for the Chief to submit definite proposals to the Company by means of a letter which could be transmitted to me through you. I should then be in a position, if the letter appeared to be suitably drawn, to forward it to the Secretary of State, and to ask His Grace, in sending it to the Company, to use his good offices to secure its object.

I have, &c.,
ARTHUR FREDERICK,
High Commissioner.

His Honour
The Resident Commissioner
of the Bechuanaland Protectorate.

MINERAL CONCESSION GRANTED BY THE CHIEF KHAMA TO THE BRITISH SOUTH AFRICA COMPANY.

Agreement for Mineral Concession in the Chief Khama's Country.

AGREEMENT made by and between Khama, Chief of the Bamangwato nation, hereinafter called the said Chief, of the one part, and The British South Africa Company having its Head Office in London and Branch Office in South Africa, and being represented in this behalf by the Honourable Maurice Gifford, hereinafter called the said Grantees, of the other part.

1. The said Chief, with the consent of his Councillors and people, gives to the said Grantees, the sole and exclusive right to prospect for precious stones, minerals and metals throughout the territory of which he is the Chief, provided that such prospecting shall not be allowed in any road, nor within 200 yards of any village, kraal, house or hut, nor within 30 miles of the town of Palapye, nor upon any land under cultivation, or required for the purpose of irrigation, without the written consent of the said Chief, his heirs, successors, or assigns, being first had and obtained.

And the said Grantees undertake to pay to the said Chief, his heirs, successors, or assigns, the sum of £25 per month, payable in advance, on the discovery in payable quantities of any gold, precious stones, minerals or metals.

2. And the sole and exclusive mining right and Concession, to search for, work, and win precious stones, gold, silver, platinum, copper ore, and all other minerals over the whole of the country known as Khama's country, is hereby given by the said Chief to the said Grantees, provided that such working and winning shall not interfere with any road, village, kraal or house, hut or cultivated or irrigated land nor within 30 miles of the town of Palapye, without the written consent of the said Chief, his heirs, successors, and assigns being first had and obtained, and previous payment of compensation to persons disturbed or about to be disturbed, to be assessed by three appraisers, one of whom shall be appointed by the said Chief, his heirs, successors or assigns, one by the said Grantees and the third chosen by the other two, shall be forthcoming and the said Chief reserves to himself the full right of refusal to allow any such prospecting or mining as may interfere with any such road, village, kraal, house, hut or cultivated or irrigated land, or within a distance of 30 miles of the town of Palapye. And the said Chief further hereby undertakes and agrees, for himself, his heirs, successors and assigns, not to give or grant any other mining concession or right whatsoever to any private individual, co-partnership, company or syndicate, over any part of his country, including the 30 mile area around the town of Palapye, over which no prospecting is allowed by the said Chief to the said Grantees in terms of paragraph 1, nor allow any such persons or Corporations to search for or win any precious stones, metals or minerals anywhere throughout the territory of which he is Chief, including the aforementioned 30 mile area around the town of Palapye.

3. And the said Grantees promise to pay or cause to be paid punctually the aforesaid sum of money to the Chief, his heirs, successors, or assigns, as afore agreed upon in terms of paragraph 1; failing the receipt of such payment the Chief, his heirs, successors or assigns shall give the representatives of the Company in South Africa due notice thereof and if the said representatives shall then decline to pay, the Chief, his heirs, successors or assigns shall have the right to cancel the said Concession without further notice, if he or they shall think fit, and the same shall cease and determine, and the said rental shall no longer be payable as aforesaid, and the said Grantees shall on payment of all rent due to date, be at liberty to remove from the land of the said Chief all machinery and plant belonging to them and the materials of all buildings or structures belonging to or erected by the said Grantees.

4. The said Chief further gives to the said Grantees the right to cut wood and use water and other easements free of charge within the limits of the said Concession, but only as such wood, water and other easements may be actually required for carrying on mining and prospecting operations, and the said Chief reserves to himself, his heirs, successors, and assigns all timber rights of his country, including all such timber and trees as may be adjacent to any prospecting or mining operations.

5. The said Grantees shall be allowed to send into the said Chief's country such prospectors, engineers, and European labourers as they may require for mining purposes, and to import free of duty all such plant and machinery as they may also require, as well as materials of all kinds, provisions and clothing in connection with their mining operations.

6. And the said Grantees further promise and agree to introduce into the territory of the said Chief only workmen of good character and to do all in their power to prevent and discourage the introduction of intoxicating liquors into the country of the said Chief, and to give effect therein to all laws, rules and regulations against the supply of intoxicating liquor to his people, and all other natives and residents in his country.

7. And the said Chief allows to the said Grantees free of all rent and charges, such land as may be necessary for mining purposes, and for such buildings as may be required in the carrying on of prospecting and mining operations, but reserves to himself all land rights of his country, and it is hereby agreed that all such land as may be necessary and used for mining or building purposes as afore agreed upon remains the property of the said Chief, his heirs, successors and assigns, nor do any such mining or building operations constitute any claim or title to any such land on the part of the said Grantees.

The said Chief hereby lastly declares that the foregoing is the only mineral concession at present in force, and he binds himself to the said Grantees in terms of paragraph 2 that he will not grant any other mining concession over his territory to any other persons whomsoever, whilst this agreement lasts.

This done and signed at Palapye this 25th day of July, 1893, in the presence of the subscribing witnesses.

KHAMA.
MAURICE R. GIFFORD.

Witnesses:—
Howard Moffat.
Charles A. Ensor.
Attested by me:—
J. S. Moffat, Assistant Commissioner.

The Government Secretary,
Mafeking.

I AM asked to advise as to the attached Mineral Concession granted by the Chief Khama to the British South Africa Company, which Concession I understand the Chief considers to have lapsed. I assume that the same was duly proved at the Concessions Court and was approved by the Secretary of State.

The Concession is a very amateurish and one-sided agreement, and I do not suppose that the Chief Khama or any other Chief would enter into such an agreement at the present day. There is no indication of the period which it is intended to cover and no rent or other consideration is payable until precious stones or minerals are found in payable quantities. It is manifestly unfair to the Chief that such an agreement should be allowed to continue indefinitely and the Chief would be well advised to call upon the Company to exercise their rights or to abandon the same and cancel the Concession. The consideration to be paid in the event of the discovery of precious stones or minerals is also absurdly inadequate. The Company might remove millions of pounds worth of diamonds, gold or coal and only pay a rental of £25 per month.

I do not know whether the Company have at any time done any prospecting under the Concession. Some 20 years ago a Mr. Ellerton Fry was boring near Tati for coal but I do not know upon what terms or by what right. If the Chief has not called upon the Company to exercise their rights or impugned the Concession in any way I do not think he can claim that,the Concession has lapsed. From his point of view I think he should enter into an amending agreement stating how long the Concession is intended to run and reserving some royalty on precious stones or minerals won, if possible. The Concession is so indefinite that the sooner it is placed upon a proper footing the better. Twenty-seven years have passed without the Company making any move and the question will have to be gone into on the death of the Chief, if not sooner.

S. MINCHIN.
C.P.

Mafeking:
17th June, 1920.

(Private.)

Office of the Assistant Commissioner, Francistown,
13th August, 1920.

DEAR ELLENBERGER,

WILL you please thank Mr. Macgregor for letting me see these papers. Minchin apparently did not know that the Bushman Mine was being worked in Khama's country before the war and that many tons of copper ore were exported, and that a few years before the war Khama commenced to receive £25 a month under the Agreement. Nettleton tells me that Khama keeps this money in a separate account at the Bank at Mafeking and has not touched a penny of it. Under these circumstances I do not think that Khama can call upon the British South Africa Company to "exercise their rights or abandon and cancel the Concession" as they have used and still wish to use these rights and are doing what is required of them under the agreement, viz., paying £25 a month to Khama.

But I take it that the Agreement is one of Letting and Hiring and as such "Where, in entering into a contract of lease, the parties have not made any agreement at all concerning the duration, the lease is one running from period to period determinable on notice, just as if it had been expressly agreed to be periodic. The period of the lease must be ascertained from the conduct of the parties and all the

circumstances of the case, but the best guide is the agreement concerning the rent. The period of time for which the rent is expressed or implied to be payable would be presumed to be the period of the lease." I am quoting from Landlord and Tenant in South Africa by Wille, it goes on to say "Grotius (Intro. 3.19.8) says, where no time is fixed, the contract, in the case of a lease of land, is understood to be for one year." Page 231, The Institutes of Cape Law, Vol. III, Maasdorp, also bears this out. This being so, and, in view of the fact that the machinery is being moved away from the Bushman Mine, I should venture to say that Khama would be within his rights if he gave the British South Africa Company one year's notice to terminate the present agreement.

Minchin says, "27 years have elapsed without the Company having made any move and the question will have to be gone into on the death of the Chief if not sooner," but as the Company have moved in the matter and if they continue to pay the £25 a month until the Agreement has been in force for over 30 years, might they not set up a claim to perpetual right to the Concession by prescription? I have no doubt that the tribe could to-day get far more advantageous terms for the mineral rights of the Bamangwato Reserve under a fresh agreement for a specific term of years should they wish to do so, but that point is doubtful and if they do not do anything at all they may lay themselves open to the old cry that they are not beneficially occupying their land for the good of South Africa generally, no doubt there are many who would say that they own coal within a convenient distance of the Railway which they do not want themselves and will not let anybody else use it.

Yours sincerely,
R. M. DANIEL.

MINERAL CONCESSION—CHIEF KHAMA TO BRITISH SOUTH AFRICA COMPANY (25TH JULY, 1893).

LEGAL ADVISER,

I SHALL be obliged if you will advise as to the position of the Bamangwato in respect of this Concession, of which I attach a copy together with an Opinion furnished by the Crown Prosecutor of the Bechuanaland Protectorate, and a letter from Lieutenant-Colonel Daniel, the Assistant Commissioner at Francistown and at present Acting Government Secretary.

The Bamangwato are anxious to obtain the cancellation of the Concession, and I understand that they would be willing to refund the amount of any payments which may have been made to the late Chief Khama in respect thereof. I assume, however, that their willingness to refund such monies, although it might perhaps be useful as an encouragement to the Company to consent to the cancellation of the Concession, would not affect the legal position. I understand also that if the Concession were to be cancelled the Bamangwato would be prepared to undertake to give the British South Africa Company a preferential right in respect of any future grant of minerals in the Bamangwato Reserve.

You will observe that there is no stipulation in the Deed of Concession as to the period during which it is to remain in operation. It has been suggested that the death of Chief Khama, by whom it was granted, might perhaps be regarded as having terminated the grant, but the use in the document of the words "his (the Chief's) heirs, successors and assigns" might perhaps be regarded as binding not only Khama's heirs in a personal sense but his successors in the Chieftainship of the Bamangwato.

You have been good enough to promise to meet the Resident Commissioner (Mr. Macgregor) in my office to-morrow (Tuesday) at 11 a.m. for discussion of this matter.

H. J. STANLEY.

5th March, 1923.

BECHUANALAND PROTECTORATE. MINERAL CONCESSION GRANTED BY KHAMA TO THE BRITISH SOUTH AFRICA COMPANY.

IMPERIAL SECRETARY,

As pointed out in the attached papers no period is fixed for the duration of this Concession. I do not think the Concession can be regarded as terminated by

reason of Khama's death. I think it is clear from the terms of the Concession that it was intended, unless terminated during his lifetime, to remain in force when the territory passed to his successors.

Colonel Daniel suggests that the agreement is to be regarded as a lease, and that the rules, which he quotes, as stated in Professor Wille's book, with regard to the duration of leases the parties to which have not fixed the duration by express agreement, should apply. The agreement does not constitute a "lease" in the strict sense of the term. A lessee has, under Roman Dutch law, no right to destroy and appropriate the substance of the thing hired. An agreement such as this which confers the right to dig for and extract minerals is usually described as a "mining lease," but should really be regarded as a contract *sui generis*, cf. Neebe *ex.* Registrar of Mining Rights, 1902, T.S. 65. For the purpose, however, of ascertaining its duration where no definite duration has been fixed, it is, I think, justifiable to have recourse to the rule applied to leases, as there is a distinct analogy between such an agreement as this and a lease. It is true that a man who expends his labour and resources in discovering precious stones, minerals or metals and opening a mine will be hardly dealt with if after he has opened a mine instead of being allowed to enjoy the fruit of his discovery and of his labours, he is required to quit on short notice, but a similar position may arise in the case of a lease of land where the tenant obtains the lease in order to erect a house, and fails to stipulate for a long term. This is illustrated by the case of van Raht *vs.* van Breda, 20 S.C. 73. In that case the respondent, owner of a farm, allowed the appellant to build a cottage on his land subject to payment of one shilling per month as rent. No period was fixed, and no provision was made for compensation to the tenant on leaving. The appellant contended that the agreement established a lease which was to endure for the appellant's life. The Court held that no such agreement could be inferred, and that appellant was only a monthly tenant, and could be ejected on a month's notice. De Villers, C.J., in giving judgment, remarked "It may be a hard case for the defendant, and no doubt in some cases it would be a hardship for a person who has built a house to be turned out at a month's notice, but he knows before he begins the building what the plaintiff can claim [that is, he is assumed to know the law], and it is for him to consider before he builds the house whether he should undertake the work, and trust merely to the generosity or the good nature of the owner of the property." He added, "Of course the owner of land would not be allowed to take advantage of his own wrong where after fraudulently inducing another person to build on the land in the belief that he would, for a reasonable time, have the use of the building, he cuts short the tenancy before the tenant has had a fair return for his outlay." The concession in the present case has already lasted for nearly thirty years so if there was any understanding in the first instance that the concessionaire would be allowed reasonable time in which to derive benefit from any work done under the concession such time may be regarded as having now elapsed.

I think that the Chief's successors are probably entitled, as monthly payments are stipulated for, to terminate the concession by giving the Company a month's notice, but owing to the special character of the agreement I cannot advise with absolute confidence on the point, and in order to be on the safe side I think a year's notice should be given of the termination of the agreement if it is desired to take formal steps for this purpose.

R. FEETHAM.

16th March, 1923.

17787

No. 9.

THE BRITISH SOUTH AFRICA COMPANY to COLONIAL OFFICE.

[*Answered by Nos.* 11 *and* 29.]

Rhodesia House, 2, London Wall Buildings, London, E.C. 2.
9th April, 1923.

SIR,

MY Directors have recently been considering the position of the British South Africa Company as owner of sundry concessions in the Bechuanaland Protectorate,

including the mineral concession granted by Khama over the territories of which he was chief, and of preferential rights to minerals and land in that portion of the Protectorate which lies outside the boundaries of any native reserve.

The Board has felt in the past that its proposals for the development of its mineral and land rights in the Protectorate have received little encouragement from His Majesty's Government, and that the attitude of His Majesty's Government may very likely have been influenced by Khama's dislike of any influx of white settlers into his territories or indeed into the Protectorate generally.

The Board thinks it probable that Khama's death may have produced a new situation which may be reflected in a change of attitude on the part of His Majesty's Government. My Directors would therefore be glad to know whether the Company may expect that the Secretary of State would now be disposed to regard more favourably a policy of allowing the Company to turn to practical account the various mineral concessions and the preferential rights to minerals and land in the Protectorate to which it is entitled.

I am, &c.,
A. P. MILLAR,
Secretary.

17632

No. 10.

THE SECRETARY OF STATE to THE HIGH COMMISSIONER.

[*Answered by No.* 16.]

(No. 181.)

Downing Street, 8th May, 1923.

SIR,

I HAVE the honour to acknowledge the receipt of Your Royal Highness' despatch No. 301 of the 21st of March,* covering a copy of a despatch to the Resident Commissioner of the Bechuanaland Protectorate on the subject of the Mineral Concession granted in 1893 by Chief Khama to the British South Africa Company.

2. I understand that this is the first occasion on which the question of the power of the Chief to determine the Concession has been raised, and I anticipate difficulty in inducing the British South Africa Company to accept the view taken by Mr. Feetham, especially since, as will be seen from the enclosed copy of a letter from the Company of the 9th of April,† the Board have taken the opportunity of the change in the chiefdom to press to be allowed to turn the Concession to practical account.

3. I should be glad to receive your observations on the Company's letter.

I have, &c.,
DEVONSHIRE.

17632

No. 11.

COLONIAL OFFICE to THE BRITISH SOUTH AFRICA COMPANY.

Downing Street, 8th May, 1923.

SIR,

I AM directed to acknowledge the receipt of your letter of the 9th of April,† regarding the position of the British South Africa Company as holder of various mineral concessions and of preferential rights to minerals and land in the Bechuanaland Protectorate, and to request you to inform your Directors that he is in communication with the High Commissioner for South Africa in the matter.

I am, &c.,
C. T. DAVIS.

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* No. 8. † No. 9.

25471

No. 12.

THE HIGH COMMISSIONER to THE SECRETARY OF STATE.

(Received 22nd May, 1923.)

(Confidential.)

MY LORD DUKE, High Commissioner's Office, Cape Town, 3rd May, 1923.

WITH reference to my Confidential despatch of the 13th February,* I have the honour to transmit herewith a copy of correspondence with the Resident Commissioner of the Bechuanaland Protectorate and of a Minute by my Legal Adviser with regard to the question of the validity at the present date of the Kanya and Gaseitsiwe Concessions.

I have, &c.,
ARTHUR FREDERICK,
High Commissioner.

Enclosure 1 in No. 12.

(Confidential.)

Resident Commissioner's Office, Mafeking.
10th March, 1923.

SIR,

I HAVE the honour to acknowledge the receipt of Your Royal Highness' Confidential despatch No. 345 of the 13th February† on the subject of Mr. van den Heever's desire to enter into an agreement with Chief Seboko and his people to prospect for minerals in the Bamalete Reserve.

2. I caused Mr. van den Heever to be informed in the sense of the second paragraph thereof and I enclose for Your Royal Highness' information a copy of his reply to the Magistrate at Gaberones together with a copy of a licence issued to him by a Mr. D. P. C. Blair, the Agent for Balkis Limited, to prospect in the strip of country "which extends westwards for about six miles from the Transvaal Border . . . from a point near Pitsani at the south-west to a point near Crocodile Pools on the north-east." This would include Chief Seboko's country, the Bamalete Reserve, and it would appear from the perusal of Sir Ralph Williams' despatch No. 106 of the 20th December, 1902, together with Lord Milner's reply, despatch No. 162 of the 31st December, 1902,‡ that the Balkis Land Company had the right to prospect over this country. The British South Africa Company acknowledge this right in a letter a copy of which was enclosed with Sir Ralph Williams' despatch No. 105 of the 24th September, 1903.§

3. The Bamalete Reserve was defined by Proclamation No. 28 of 1909‖ subsequent to the date of the above-mentioned correspondence, but there was no mention in it which would detract from any existing mineral concessions.

4. Under the circumstances it would appear that if Mr. van den Heever derives his authority from the Balkis Land Company, which in 1903 held the mineral concessions of the Gaseitsiwe Concession¶ and the Kanya Exploration Company's Concession,** he would have the right to prospect but before instructing the Magistrate to tell him so I would desire to be honoured with Your Royal Highness' instructions as to the validity of the Concession at present date.

5. In regard to the third paragraph I have the honour to inform Your Royal Highness that Mr. Richard Transfeldt is the owner of the farms Crocodile Pools and Traquair, in extent 6,000 and 3,000 morgen respectively, under Title Deeds Nos. 85 and 86, both of which were signed by Lord Selborne on the 3rd November, 1909. These farms were granted originally on 18th April, 1893, by Sebele Sechele, Chief of the Bakwena, the one to Mr. Henry Boyne and the other to Mr. Peter Johannes van Zyl. There is no clause in either deed which reserves the mineral rights to either the British South Africa Company or the Crown, and I presume that the present owner, Mr. R. Transfeldt, has the power to deal with the prospecting rights over his property as he pleases. In this connexion I would refer Your Royal

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* No. 7. † Enclosure 2 in No. 7. ‡ Enclosures 1 and 2 in No. 18 in African (South) No. 717. § Enclosure in No. 389 in African (South) No. 717. ‖ Not reprinted. ¶ Document A in No. 77 in African (South) No. 537. ** Not printed: *See* No. 209 in African (South) No. 932.

Highness to the latter part of paragraph 2 of Doctor Ward's opinion of the 25th April, 1902, which was an enclosure to Sir Ralph Williams' despatch No. 42 of the 31st May, 1902.*

I have, &c.,
J. C. MACGREGOR,
Resident Commissioner.

Ramoutsa, 23rd February, 1923.

SIR,

I AM in receipt of your favour of the 22nd instant for which I thank you.

I enclose herewith a prospecting Licence (received a few days ago) granted by the Balkis Company, London. It is evident that Chief Seboko is not aware of the existing Concession which must have been granted to these people before his time.

Will you please inform me whether this Licence is in order, and, after perusal, return to me.

By so doing you will greatly oblige, and prevent me spending any further monies.

Thanking you for the trouble given, and assuring you of my best intentions.

I have, &c.,
B. J. VAN DEN HEEVER.

The Resident Magistrate,
Gaberones.

BALKIS, LIMITED.

Registered Office: 62, London Wall, London, E.C.

LICENCE to Prospect in the area of the Concessions known as the Bangwaketsi and Kanye Mineral Concessions in the Bechuanaland Protectorate, comprising the whole of the Chief Seepa Pitso's Country, and including that portion of the country belonging to the British South African Company which extends westwards for about six miles from the Transvaal border and is traversed by the Rhodesian Railway from a point near Pitsani at the southwest to a point near Crocodile Pools on the northeast, granted to Bernard James van den Heever of 28, Derby Road, Johannesburg (hereinafter described as the "Prospector") subject to the terms and conditions following:—

1. The fee payable for this Licence shall be the sum of five shillings.

2. The Prospector shall for the period of twelve months from the fourteenth day of February, One Thousand Nine Hundred and Twenty-three, have the right to search and prospect for minerals and metals of all kinds, diamonds and other precious stones, coal and oil, in the whole area of the said Concessions, except in any road or within two hundred yards of any village kraal, house or hut, or upon any land under cultivation or required for the purpose of irrigation.

3. The Prospector shall in addition to the general right to prospect hereby granted have the right to select an area measuring 2,000 feet long by 2,000 feet wide or two areas which together do not exceed such dimensions, and in the event of such selection shall have the exclusive right to search and prospect on the said area during the term of this Licence, always provided that he shall first peg out the said area and obtain a Certificate of Registration from the Company's agent. The fee for such Certificate shall be the sum of ten shillings for each area selected.

4. On making any discovery or discoveries the Prospector shall be entitled to peg out:—

Five alluvial claims in one block, each measuring 200 feet by 200 feet.

Twenty claims in one block for precious metals, each claim measuring 150 feet along the strike of the reef and 600 feet across, but so as not to exceed 1,500 feet along the strike.

Twenty claims in one block for diamonds and other precious stones, each claim measuring 30 feet by 30 feet.

Thirty claims in one block for base metals, each claim measuring 150 feet along the strike of the lode and 600 feet across, but so as not to exceed 1,500 feet along the strike, and

an area not exceeding 640 acres for coal or oil.

* Enclosure 2 in No. 234 in African (South) No. 702.

5. In respect of each block of claims pegged out the Prospector shall forthwith apply to the Company's Licence Agent for a Certificate of Registration, and shall pay the sum of £2 for the same, and except during the first twelve months he shall pay to the Company or its agent the sum of two shillings and sixpence per claim per month for metals and precious stones, and two shillings and sixpence per 100 acres per month for coal or oil.

6. For a period of twelve months after the date of registration of a block of claims, as provided for in clause 5 hereof, the Prospector shall not be required to execute any development work, but thereafter at least 60 feet of development work shall be executed on each block of claims during every succeeding twelve months.

7. The Prospector shall be entitled to import into the territory of Seepa Pitso free of duty, all plant and machinery required for mining purposes as well as materials of all kinds, provisions and clothing.

8. The Prospector shall be entitled to such wood and water as may be necessary for the proper working of any claims pegged out by him, the cost of all labour and cartage being borne by him.

9. The following Royalties shall be payable to the Company by the Prospector, his successors and assigns:—

(*a*) On the output of gold or silver: five per cent.
(*b*) On the output of base metals: four per cent.
(*c*) On the output of diamonds or other precious stones: ten per cent.
(*d*) On the output of coal brought to the surface: five per cent.
(*e*) On the output of oil brought to the surface: five per cent.

10. This Licence is granted subject to any Mining Laws which are now or may hereafter be enacted by the British Government or Authority having power for that purpose.

Issued at Johannesburg this 14th day of February, 1923.

Signed, D. P. C. Blair, Agent for the issue of Prospecting Licences on behalf of Balkis, Limited.

Address in full, 1, Saner's Buildings, P.O. Box 1917, Loveday Street, Johannesburg.

Countersigned by the Prospector, B. J. van den Heever.

Enclosure 2 in No. 12.

BECHUANALAND PROTECTORATE. VALIDITY AND DURATION OF MINERAL CONCESSIONS.

THE two Concessions referred to in the Resident Commissioner's despatch of 10th March are, I understand,

(1) The Gaseitsiwe Concession—of which a copy is printed on pages 89-90 of the White Book (African, South No. 537);
(2) A concession referred to as "the Kanya Exploration Company's Concession," a copy of which was enclosed with the Secretary of State's despatch No. 347 of the 2nd October, 1909.*

Of these Concessions (1) is dated 29th March, 1888, and granted by the Chief to Mr. John Williams of Kanya, who is referred to throughout as "the said Grantee."

Certain payments are provided for—a monthly payment of five shillings payable in advance for prospecting, and an annual payment of one pound per square mile of any mining area selected under the terms of the Concession—also payable in advance, and a royalty of 2½ per cent. payable annually upon the gross value of precious stones and minerals won by the Grantee. No definite period is fixed for the duration of the Concession, but it is provided that it shall "last so long only as the said sums of money shall be punctually paid," and the Concession is to come to an end if the Grantee fails to pay the same within three months of the due date, or if the Grantee gives to the Chief, his heir, successors or assigns six months' notice in writing of his intention to terminate the same.

Concession (2) which is in favour of three Grantees, is very similar in its terms as regards sums payable thereunder, and duration, except that the one pound per annum per square mile is payable quarterly instead of annually in advance; there is, however, this point of difference, that whereas in Concession (1) "the said Grantee" only is mentioned throughout, the rights conferred by Concession (2) are conferred on "the said Grantees, their heirs, executors, administrators and assigns." It is to be

* No. 209 in African (South) No. 932.

noticed that both these Concessions provide that the rights conferred are to terminate automatically if the Grantees allow the stipulated payments to be more than three months in arrear, and that the Grantees also have power to terminate the Concessions on giving six months' notice. There is no provision as to notice of termination by the Grantor, and I think that, subject to the point dealt with below affecting Concession (1), these Concessions should be read as intended to last so long as the Grantees or their assigns wish, provided the payments are kept up. It has been held that a lease may validly be made to last for as long as the lessee pleases (cf. Friedman v. Friedman 1917 C.P.D. 268 and Cohen v. Van der Westhuizen 1912 A.D. 519), and there seems no reason why this should not also be permissible in the case of "mining leases." Concession (2) must, therefore, I think be regarded as still in force provided the sums due thereunder have been punctually paid, and no notice of termination has been given by the Grantees or their assigns.

In view, however, of the absence of any mention of the Grantee's assigns in Concession (1), the point arises whether the duration of that Concession was intended to be limited to the life of the original concessionaire. Mining leases are, speaking generally, regarded as assignable, even where there is no mention of the lessee's assigns (Henderson and another v. Hanekom 20 S.C. 513 at pages 522 and 525), and this Concession had already been transferred to assigns at the date when the Concessions Commission reported upon it (White Book Africa South 537, page 8). Though there may perhaps be some room for doubt on the point, I do not think, as the right conferred is an assignable right, that it should be inferred from the absence of any mention of assigns in the document that the duration of the Concession is limited to the life of the original concessionaire, and I think Concession (1) must therefore be regarded as standing as regards duration on the same footing as Concession (2).—If Mr. John Williams, the original Concessionaire of Concession (1), is still alive the point here discussed does not of course affect the present validity of the Concession.—It seems probable that the Swaziland Concessions Commission had to deal with mineral concessions similar in character to Concession (1), i.e., concessions made to individuals, without mention of assigns, the duration of which was not limited to any definite term, and I have looked in the report of their detailed decisions to see if they express any opinion as to the duration of such concessions, but I have not been able to find anything which bears directly on this point.

R. FEETHAM.

Imperial Secretary.
30th April, 1923.

Enclosure 3 in No. 12.

(Confidential.)
(No. 654.)

High Commissioner's Office, Cape Town.
3rd May, 1923.

SIR,

WITH reference to your Confidential despatch of the 10th March, I have the honour to transmit herewith a copy of a minute by my Legal Adviser with regard to the question of the validity at the present date of the Kanya and Gaseitsiwe Concessions.

You will observe that, in Mr. Feetham's opinion, both Concessions must be regarded as still in force, provided that the sums due thereunder have been punctually paid, and that no notice of termination has been given by the Grantees or their assigns.

I have, &c.,
ARTHUR FREDERICK,
High Commissioner.

His Honour
The Resident Commissioner
of the Bechuanaland Protectorate.

28026

No. 13.

THE HIGH COMMISSIONER to THE SECRETARY OF STATE.

(Received 4th June, 1923.)

[*Answered by No.* 15.]

(No. 560.)

MY LORD DUKE, High Commissioner's Office, Cape Town, 18th May, 1923.

WITH reference to my despatch No. 301 of the 21st March* on the subject of the Mineral Concession granted by the late Chief Khama to the British South Africa Company, I have the honour to enclose herewith a copy of a despatch from the Resident Commissioner of the Bechuanaland Protectorate forwarding a copy of a letter which he has received from Sekgoma.

2. In my despatch No. 726 of the 20th March to the Resident Commissioner,† I had contemplated that the Chief would address his letter to the British South Africa Company, but it is possible that he may have experienced some difficulty in framing such a letter. His letter to the Resident Commissioner is hardly suitable for communication to the Company. I venture to think, however, that His Majesty's Government, as the protecting Power, might take the matter up with the Company on behalf of the Chief and tribe.

3. Any such representations could, I think, be more conveniently made to the Board of Directors in London than to the Company's agents in South Africa, as in any event the matter would presumably have to be referred to the Board before a decision could be reached. In the circumstances I would suggest, if Your Grace sees no objection, that representations might be made to the Company by the Colonial Office.

4. Your Grace will have observed from the copy of my Legal Adviser's opinion which accompanied my despatch under reference, that Mr. Feetham thinks that Khama's successors are probably entitled to terminate the Concession by giving the Company a month's notice, but that, owing to the special character of the agreement, Mr. Feetham did not feel able to advise with absolute confidence on the point, and that he has suggested that, in order to be on the safe side, a year's notice should be given of the termination of the agreement. If, however, Mr. Feetham's view should be challenged by the Company, and if Your Grace should be advised that there is reasonable doubt on the point, further negotiations for an amicable settlement might perhaps be facilitated by the Chief's apparent willingness to refund, if necessary, all the money which has been paid by the Company to Khama and himself in respect of the Concession, and to give preference to the Company in the event of his ever granting a Concession.

I have, &c.,
ARTHUR FREDERICK,
High Commissioner.

Enclosure in No. 13.

(H.C. 121.)

Resident Commissioner's Office, Mafeking.
10th May, 1923.

SIR,

WITH reference to Your Royal Highness' despatch No. 726 of the 20th March last† I have the honour to transmit herewith a letter from the Chief Sekgoma on the subject of the proposed termination of the Concession granted by the late Chief Khama to the British South Africa Company.

2. I may add that should it appear necessary in order to effect the purpose, the Chief would be willing to refund all the money that has been paid by the Company in respect of the Concession, and I am of opinion, though he has not said so, that he would also be willing to give preference to the Company in the event of his ever granting a concession.

I have, &c.,
J. C. MACGREGOR,
Resident Commissioner.

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* No. 8. † Enclosure in No. 8.

SIR, Serowe, Bechuanaland Protectorate, 5th April, 1923.

I HAVE received your kind letter about the Mineral Concession which some years ago were granted to the British South Africa Company by my late father, and through your kind advice I am prepared to confirm the statement and the suggestion of cancellation which recently were placed before Your Honour's notice by my late father. I know for all that the Concessions were granted by him but in later years he had determined the cancellation and unfortunately he died before a final decision is reached at.

Our main object is that when mines are established in the native country where cattle are every day increasing to enormous numbers and the new villages are beginning to spring up, there will be no space for the people, neither for our live-stock.

Your Honour is aware that our principal rivers have been ceded to the British South Africa Company as boundary fence and our country is almost a desert and we have hard times through the scarcity of water. The wells we have sunk are mostly without sufficient water to provide for our cattle. By the time my father signed the agreement about the mineral rights I am sorry he did not know the difference of administrations nor the position of the Charter, he had thought the British South Africa Company is of the same purpose with the Imperial Government. If this point could have been thoroughly explained to him I am sure such Concessions could not have been granted under any circumstances. He really did not know that the British South Africa Company is a Company formed by some rich men on certain basis of exploring the Country merely for treasures.

Your Honour, myself and my people do hereby invite your kind support and careful consideration that our suggestions should be well supported and feel sure that in the grave dangers ahead of us the clear consciousness of that cause alone will strengthen us to hold on unflinchingly to the Imperial Government. We are aware that the attitudes of the British South Africa Company might in the future bring us an unexpected disastrous calamity. I have already observed from some of the leading papers inviting the Mineral Companies to take steps vigorously of putting up mines in the Reserve. They said Khama is dead why should the mines not be established in Khama's Country. These different opinions make us to suspect and believe that the mineral Concessions will at last deprive us of our Country. These suggestions made by them are not to help the Mother Country, but to help the cause which is as much theirs as hers.

The object of the British South Africa Company in its confidence and determination is nothing more but to run our country with mines of gold and to secure whatever rights we had possessed.

Sir, I am deeply grateful to you for the suggestions which you have put before me for my deliberate opinion.

Our future problem is very difficult one, however in the end we shall achieve success through your brilliant guidance known to us for many years. The flag which had guarded my late father and draped his coffin to the grave, may continually blow over us.

The British Government is the place of refuge to which oppressed and benighted could flee; and never fled in vain.

We are the sons and daughters of the mighty King and we humbly beg to be fed with nice porridge, not with stone.

I should deem it proper and fair enough that Your Honour would give the British South Africa Company six months or one year notice to withdraw their rights.

I am, &c.,
SEKGOMA KHAMA.

His Honour
The Resident Commissioner of the Bechuanaland Protectorate.

28180

No. 14.

THE HIGH COMMISSIONER to THE SECRETARY OF STATE.

(Received 5th June, 1923.)

(Confidential (2).)

MY LORD DUKE, High Commissioner's Office, Cape Town, 17th May, 1923.

WITH reference to Your Grace's Confidential despatch of the 21st December, 1922.* I have the honour to enclose, for your information, copies of correspondence

* No. 6.

with the Resident Commissioner, Bechuanaland Protectorate, on the subject of the subsidy paid by the British South Africa Company to the Chief of the Bamalete.

I have, &c.,
ARTHUR FREDERICK.
High Commissioner.

Enclosure 1 in No. 14.

(Confidential.)

Resident Commissioner's Office, Mafeking.
10th May, 1923.

SIR,

I HAVE the honour to enclose herewith a copy of a letter received by the Acting Government Secretary from the Local Secretary of the British South Africa Company, Cape Town, on the subject of the subsidy paid by that Company to the Chief of the Bamalete.

2. In the penultimate paragraph the Local Secretary inquires whether Chief Seboko is recognized as competent to grant any mineral concession over the Bamalete Reserve, and I should be obliged if I could be favoured with Your Royal Highness' instructions as to the reply to be given.

3. I caused Seboko to be approached on the subject as his unqualified refusal would have simplified matters.

4. The Chief consulted his people and replied that they could not accept the proposal of the British South Africa Company as they considered a royalty of 1 per cent., on the gross value of any minerals won was insufficient, but in consideration of the Company agreeing to continue the annual payment of £50 they would be prepared to give them their assurance that they will not grant a preference to anyone else, the Chief adding that if at any time the Company wished to prospect in his reserve the Bamalete would be willing to allow them to do so, provided they offer terms which are acceptable to them and provided the transaction is approved by the Secretary of State.

5. The question of the mineral rights of the Bamalete Reserve is involved to the extent that "Balkis Limited" claim certain rights under the Gaseitsiwe and Kanya Concessions, and Your Royal Highness informs me in your Confidential despatch of the 3rd of May* that it is Mr. Feetham's opinion that both these Concessions must be regarded as still in force provided that the sums due thereunder have been punctually paid. As regards this proviso I am by no means sure that any payments are being made as Chief Tshosa disclaimed any knowledge of these Concessions a short while ago.

6. I am causing further inquiries to be made through the Magistrate at Kanya on this point.

7. Even if these Concessions are still active however it would appear from Sir Ralph Williams' despatch No. 106 of the 20th December, 1902,† that it is questionable whether they constitute the exclusive rights over the Bamalete Reserve.

I have, &c.,
J. C. MACGREGOR,
Resident Commissioner.

SIR, Cape Town, 13th February, 1923.

I HAVE the honour to refer to your letter of the 23rd November last, on the subject of the subsidy paid by this Company to the Chief of the Bamalete.

The whole question has been considered by the Board who feel that, while it is clear that the original agreement in 1894 to pay £50 a year to the Chief Ikaning was not, and cannot have been, connected with the subsequent acquisition of land for the railway, yet they are not on very strong ground in insisting on the view that the continuance of the payments had nothing to do with railway facilities, since there seems no doubt that the railway does in fact run through Seboko's territory and as far as can be ascertained no other payment has been made to Seboko in this connexion.

* Enclosure 3 in No. 12. † Enclosure 1 in No. 19 in African (South) No. 717.

The Directors, therefore, do not feel justified, in all the circumstances of the case after this lapse of time, in terminating the subsidy. On the other hand, the Board considers it reasonable that Seboko should bear in mind the fact that the subsidy was granted in 1894 purely as a friendly act on the part of the British South Africa Company, in compensation for loss of revenue occasioned by the disallowance by the Imperial Government of a mineral concession which Ikaning had granted to other parties, and the fact that, while Sebele and Bathoen, who received similar subsidies, subsequently surrendered substantial areas of land which are now in the possession of the British South Africa Company, no such rights have been received in the Bamalete area. He should, therefore, be favourably disposed to grant to the British South Africa Company a Concession of mineral rights in his territory, to replace in fact the Concession which was originally granted in 1888 and in respect of which the subsidy of £50 a year was originally given.

Under the circumstances, I should be glad to know whether Seboko is recognized as competent to grant any mineral concession over the Bamalete Reserve.

For your information, I may say that in return for the exclusive right to prospect and work minerals, the Board would be prepared to pay, in addition to the existing subsidy of £50 a year, a royalty of 1 per cent. on the gross value of any minerals won.

I have, &c.,
F. B. PHILIP,
Local Secretary.

Enclosure 2 in No. 14.

(Confidential.)
(No. 1221.)

High Commissioner's Office, Cape Town.
17th May, 1923.

SIR,

I HAVE the honour to acknowledge the receipt of your Confidential despatch of the 10th May forwarding a copy of a letter from the Local Secretary of the British South Africa Company, Cape Town, on the subject of the subsidy paid by the Company to the Chief of the Bamalete.

I will defer my reply until I have received the information which you are obtaining as to the payment or non-payment to the native chief or chiefs concerned of the sums due under the Gaseitsiwe and Kanya Concessions.

I have, &c.,
ARTHUR FREDERICK,
High Commissioner.

28026

No. 15.

THE SECRETARY OF STATE to THE HIGH COMMISSIONER.

[*Answered by No.* 16.]

(No. 229.)

Downing Street, 21st June, 1923.

SIR,

I HAVE the honour to acknowledge the receipt of Your Royal Highness' despatch No. 560 of the 18th of May,* regarding the mineral concession granted by the late Chief Khama to the British South Africa Company and to inform you that before considering the matter further I propose to await your reply to my despatch No. 181 of the 8th of May.†

I have, &c.,
DEVONSHIRE.

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* No. 13. † No. 10.

42532

No. 16.

THE HIGH COMMISSIONER to THE SECRETARY OF STATE.

(Received 27th August, 1923.)

(No. 920.)

MY LORD DUKE, High Commissioner's Office, Cape Town, 10th August, 1923.

WITH reference to Your Grace's despatches No. 181 of the 8th May,* and No. 229 of the 21st June,† on the subject of the Mineral Concession granted in 1893 by the Chief Khama to the British South Africa Company, I have the honour to transmit to Your Grace the accompanying copy of correspondence with the Resident Commissioner.

2. I will address a further despatch to Your Grace as soon as possible after receipt of the observations for which I have asked the Resident Commissioner. I may mention that the Imperial Secretary, during his recent visit to Mafeking, spoke to Sir James Macgregor and Mr. Ellenberger about this matter, and that they asked for a little time to consider it more fully.

I have, &c.,
ARTHUR FREDERICK.
High Commissioner.

Enclosure 1 in No. 16.

(No. 1330.)

High Commissioner's Office, Cape Town.
7th June, 1923.

SIR,

WITH reference to my despatch No. 726 of the 20th March‡ and subsequent correspondence on the subject of the Mineral Concession granted in 1893 by Chief Khama to the British South Africa Company, I have the honour to transmit to you, for your observations, a copy of a despatch from the Secretary of State§ forwarding a copy of a letter from the British South Africa Company inquiring whether, in view of the change in the chieftainship of the Bamangwato, the Secretary of State would be disposed to regard favourably a policy of allowing the Company to turn to practical account the Company's various mineral concessions and its "preferential rights to minerals and lands in the Protectorate."

His Grace's despatch has crossed my despatch to him No. 560 of the 18th May,‖ of which a copy was sent to you under cover of my despatch No. 1219 of the same date.¶

I have, &c.,
ARTHUR FREDERICK,
High Commissioner.

Enclosure 2 in No. 16.

(No. 1698.)

High Commissioner's Office, Cape Town.
17th July, 1923.

SIR,

WITH reference to my despatch No. 1219 of the 18th May,¶ I have the honour to enclose herewith a copy of the Secretary of State's reply to my despatch No. 560 of the 18th May‖ on the subject of the mineral concession granted by the late Chief Khama to the British South Africa Company.

A copy of the Secretary of State's despatch No. 181 of the 8th May* was forwarded to you, for your observations, under cover of my despatch No. 1330 of the 7th June, to which I await your reply.

I have, &c.,
ARTHUR FREDERICK,
High Commissioner.

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* No. 10. † No. 15 ‡ Enclosure in No. 8. § No. 10. ‖ No. 13. ¶ Not printed.

Enclosure 3 in No. 16.

(H.C. 234.)

Resident Commissioner's Office, Mafeking.
21st July, 1923.

SIR,

I HAVE the honour to acknowledge the receipt of Your Royal Highness' despatch No. 1698 of the 17th July and to refer to your previous despatch No. 1330 of the 7th June and previous correspondence on the subject of the Mineral Concession granted by the late Chief Khama in 1893 to the British South Africa Company.

2. I regret to say that, though it is stated plainly therein, I did not realize that the Secretary of State's despatch was not a reply to that of Your Royal Highness' No. 560 of the 18th May*; I inferred, erroneously, that it was, and was awaiting a favourable opportunity of discussing the situation with Sekgoma.

3. The only further observation which I might make upon the question is that the Concession is so hedged around with conditions that without the good will of the Chief it is of small value, e.g., "prospecting shall not be allowed . . . within 200 yards of any village, kraal, house or hut . . . nor upon any land under cultivation or required for the purpose of irrigation without the written consent of the Chief . . . being first had and obtained." A kraal or hut can be built and a land cultivated in a few hours so that it would not be difficult for a Chief who was hostile to the Concession to bring about any of these conditions at any time or place he desired. At best there would be constant friction and I suggest that it would be very much to the interest of the Company to get their money back and a preference over other possible applicants if such can be obtained.

I have, &c.,
J. C. MACGREGOR,
Resident Commissioner.

Enclosure 4 in No. 16.

(No. 1843.)

High Commissioner's Office, Cape Town.
9th August, 1923.

SIR,

I HAVE the honour to acknowledge the receipt of your despatch No. 234 of the 21st July on the subject of the mineral concession granted by the late Chief Khama to the British South Africa Company.

Before communicating further with the Secretary of State, I should be glad to be furnished with your observations upon the letter of the 9th April from the British South Africa Company to the Colonial Office† (see my despatch No. 1330 of the 7th June), which raises the general question of the future attitude of His Majesty's Government towards the utilization of the Company's various mineral concessions and the "preferential rights to minerals and land in the Protectorate" to which it claims to be entitled.

I have, &c.,
ARTHUR FREDERICK,
High Commissioner.

46152

No. 17.

THE HIGH COMMISSIONER to the SECRETARY OF STATE.

(Received 18th September, 1923.)

(Confidential.)

MY LORD DUKE, High Commissioner's Office, Cape Town, 31st August, 1923.

WITH reference to my despatch Confidential No. 2 of the 17th May‡ on the subject of the subsidy paid by the British South Africa Company to the Chief of the Bamalete, I have the honour to transmit to Your Grace the accompanying copy of a despatch from the Resident Commissioner regarding the Gaseitsiwe and Kanye Concessions at present held by the Balkis Company, Limited. It will be observed that the Acting Chief of the Bangwaketsi receives quarterly from that Company the sum of £1 10s. 0d., which is the amount payable under each Concession.

* No. 13. † No. 9. ‡ No. 14.

2. I also enclose, in continuation of my Confidential despatch of the 3rd May* regarding the question of the validity of the two above-mentioned Concessions at the present date, a copy of a further despatch from Sir James Macgregor forwarding copies of two letters which have been received from Mr. B. J. van den Heever, the holder of the "Licence to Prospect" granted to him by the Balkis Company (of which a copy was enclosed in my despatch of the 3rd May*). Sir James Macgregor also encloses a copy of an interesting and valuable memorandum which has been prepared by the Government Secretary (Mr. Ellenberger) regarding the position of the Bamalete Reserve in relation to the Gaseitsiwe and Kanye Concessions.

3. I am inclined to agree with the opinions expressed in paragraph 6 of Sir James Macgregor's despatch of the 21st August, but as difficult points of law may be involved, and in view of the possibility that a ruling adverse to the claims of the Balkis Company and Mr. van den Heever might give rise to litigation, I think it desirable to await Your Grace's instructions before any definite reply is sent to Mr. van den Heever.

4. I should also be obliged if Your Grace would give directions as to the reply which you would wish to be sent to the letter of the 13th February from the Local Secretary of the British South Africa Company, of which a copy was enclosed with my despatch Confidential (2) of the 17th May.†

5. I have not yet received the Resident Commissioner's observations upon the general question (raised in the enclosure to Your Grace's despatch No. 181 of the 8th May‡) of the future attitude of His Majesty's Government towards the utilization of the British South Africa Company's various mineral concessions and the "preferential rights to minerals and land in the Protectorate" to which the Company claims to be entitled—see my despatch No. 920 of the 10th instant.§

I have, &c.,
ARTHUR FREDERICK,
High Commissioner.

Enclosure 1 in No. 17.

(Confidential.)

Resident Commissioner's Office, Mafeking.
16th July, 1923.

SIR,

I HAVE the honour to acknowledge the receipt of Your Royal Highness' Confidential despatches No. 1221, of the 17th May‖ and the 5th July,¶ respectively, regarding the subsidy paid by the British South Africa Company to the Chief of the Bamalete and the payment or non-payment, to the native chief or chiefs concerned, of the sums due under the Gaseitsiwe and Kanye Concessions, and, in reply, to inform Your Royal Highness that these two Concessions are held by the Balkis Company, Limited, from whom Tshosa, the Acting Chief of the Bangwaketse tribe, states that he receives quarterly the sum of £1 10s. 0d. which is the amount payable under each Concession.

2. I doubt, however, whether the late Chief Gaseitsiwe had the right to grant concessions over the Bamalete Reserve, and I feel sure that it will be disputed to-day. Mr. Ellenberger, who was directly connected with the administration of these people, first as Clerk to the Assistant Commissioner, and then as Assistant Commissioner since 1902, informs me that they have always been regarded and treated as independent of the Bangwaketse. They have certainly been so regarded in my experience of them, and I never heard of any claim to the contrary on the part of the Bangwaketse.

3. I regret the delay which has occurred in transmitting this information to Your Royal Highness.

I have, &c.,
J. C. MACGREGOR,
Resident Commissioner.

Enclosure 2 in No. 17.

(Confidential.)
(H.C. 259.)

Resident Commissioner's Office, Mafeking.
21st August, 1923.

SIR,

WITH reference to Your Royal Highness' Confidential despatch of the 3rd May,** transmitting a copy of a minute by your Legal Adviser regarding the validity

* No. 12. † No. 14. ‡ No. 16. § No. 16. ‖ Enclosure 2 in No. 14. ¶ Reminder; not printed. ** Enclosure 3 in No. 12.

of the Gaseitsiwe Concession and Kanya Exploration Company's Concession, dated respectively the 29th March, 1888, and 13th October, 1887, and to my Confidential despatch of the 16th July last, concerning the right of the Balkis Company, Limited —holders of these two mineral concessions—to prospect thereunder in the Bamalete Reserve, I have the honour to inform Your Royal Highness that, since writing my above-mentioned despatch, I have received two letters in which Mr. van den Heever states that he has discovered gold in the Bamalete Reserve and asks for advice as to the steps he should take to protect his discoverer's rights pending the promulgation of a Mining Law for the Bechuanaland Protectorate.

2. I enclose a copy of these two letters and should be glad of instructions from Your Royal Highness as to the reply to be returned thereto. Meanwhile I have caused Mr. van den Heever to be informed that these letters have reached me and that the points raised by him are receiving attention.

3. All that Mr. van den Heever has previously been told—besides being informed in the sense of the second paragraph of Your Royal Highness' despatch No. 345 of the 13th February last*—is that his letters have raised the question of agreements dating back to 1887 and 1888, necessitating some considerable reference and inquiry, and that I regretted not being in a position yet to give him a definite reply.

4. The Imperial Secretary's recent visit to Mafeking gave me an opportunity of discussing these two Concessions as affecting (if at all) the Bamalete Reserve, and it was decided that the Government Secretary who was in a position to give valuable information in respect of events which took place between 1880 and 1895, should prepare a memorandum on the subject. Mr. Ellenberger has done so, and a copy thereof is submitted herewith for Your Royal Highness' information.

5. The points requiring consideration appear to be :—

(*a*) Whether these two Mineral Concessions confer on the holders thereof (who at the present moment appear to be the Balkis Company, Limited), any right to prospect and select mining areas within the Bamalete Reserve, as defined by Proclamation No. 28 of 1909.‡

(*b*) What steps (if any) Mr. van den Heever should take to protect his discoverer's rights in the Bamalete Reserve, and whether he may proceed to test the reefs which he says he has discovered therein.

(*c*) What reply should be given to the Local Secretary of the British South Africa Company, Cape Town, regarding his suggestion that Seboko, Chief of the Bamalete, should grant to the British South Africa Company a Mineral Concession over the Bamalete Reserve if competent to do so.

6. My views on these points are :—

As regards (*a*) : That the Balkis Company has no right to prospect in the Bamalete Reserve.

As regards (*b*) : That it is not open to Mr. van den Heever to take any steps in these matters, inasmuch as he is prospecting under licence from the Balkis Company, Limited, who have not proved their right to grant such licences in respect of any area within the Bamalete Reserve, and, further, that he may not proceed privately in these matters unless and until the Secretary of State sanctions and approves some sort of agreement between him and Seboko (Section 45 of Proclamation of 10th June, 1891).‡

As regards (*c*) : That the annual payment of £50, made by the British South Africa Company to successive Chiefs of the Bamalete since 1895, was paid as a *solatium* for a disallowed concession and "made practically without stipulating for any equivalent in return" and while bearing in mind the instructions contained in paragraph 4 of the Secretary of State's despatch of the 20th December, 1892,†† to the effect that the Government

High Commissioner to Resident Commissioner, No. 155, 2nd July, 1895.

High Commissioner's despatch Confidential 654, 3rd May, 1923.†
Resident Commissioner to High Commissioner, Confidential 7th February, 1923.§
High Commissioner to Resident Commissioner, Confidential, No. 345, 13th February, 1923.‖
Resident Commissioner to High Commissioner, Confidential, 10th March, 1923.¶
High Commissioner to Resident Commissioner, 654, 3rd May, 1923.¶
Resident Commissioner to High Commissioner, Confidential, 10th May, 1923.**
High Commissioner to Resident Commissioner, Confidential, No. 1221, 17th May, 1923** and 5th July, 1923.††
Resident Commissioner to High Commissioner, Confidential, 16th July, 1923.§§

* Enclosure 2 in No. 7. † Enclosure 3 in No. 12 ‡ Enclosure 1 in No. 17 in African (South) No. 417. § Enclosure 1 in No. 7. ‖ Enclosure 2 in No. 7. ¶ Enclosures 1 and 3 in No. 12 ** Enclosures 1 and 2 in No. 14. †† Not sent to Colonial Office ‡‡ No. 42 in African No. 441 and pp. 26-30 of C.7154. §§ Enclosure 1 in No. 17. ‖‖ Not printed.

officials in the Protectorate would use their best endeavours to assist the British South Africa Company in obtaining from the native chiefs concessions of the nature and on the conditions therein mentioned, I could not conscientiously recommend the approval of any agreement, other than a purely preferential one with the British South Africa Company, tending to deprive the Bamalete of the use of any portion of their Reserve, considering how small that Reserve is and that it is already so congested that the Chief and his people have made various attempts at purchasing adjoining land, which, however, have been unsuccessful.

I have, &c.,
J. C. MACGREGOR,
Resident Commissioner.

Ramoutsa, 27th July, 1923.

SIR,

I BEG to inform you that I have discovered gold in Chief Seboko's Reserve. Will you please inform me whether I would be allowed to open the reefs and whether I require a licence from your Government.

Hoping to receive a favourable reply.

I have, &c.,
B. J. VAN DEN HEEVER.

P.O. Ramoutsa, 2nd August, 1923.

(Extract.)

SIR,

* * * * * * *

Since reporting to you "*re* gold discovery" I have made further discoveries and am very anxious for you, please, to advise me what to do. May I do some testing of reefs until Laws are promulgated, and can I peg off my discoverer rights claims?

If I am allowed this I will be protected as discoverer and will then be quite satisfied to wait until Mining Laws are made.

I remain, &c.,
B. J. VAN DEN HEEVER.

MEMORANDUM REGARDING MINERAL CONCESSIONS IN THE BAMALETE RESERVE AS AT THE 21ST AUGUST, 1923.

Compiled by Mr. J. Ellenberger, I.S.O., Government Secretary of the Bechuanaland Protectorate.

1. THE Balkis Company, Limited, are said to be the holders of the Mineral Concessions dated, respectively, the 29th March, 1888, and 13th October, 1887, generally known as the Gaseitsiwe or Bangwaketse Concession and the Kanye Exploration Company's Concession, granted by Gaseitsiwe, late Chief of the Bangwaketse tribe, and recognized by Her Majesty's Government (see clauses i and iii (a) of paragraph 21 of the Secretary of State's despatch No. 16 of the 15th January, 1895, published in White Book African (South) No. 537, pp. [32-33] 35 to 42). The terms of these two Concessions have so far been observed by the holders thereof.

2. As to the Balkis Company's legal right to these Concessions, the latest despatch which I have been able to trace in respect of this particular point, is the Secretary of State's No. 138, of the 3rd March, 1904,* a copy of which was transmitted to the Resident Commissioner under cover of the High Commissioner's despatch No. 54, of the 2nd April, 1904, and from which it will be seen that, in 1901, the Balkis Company had agreed to purchase these two Concessions, and that, in 1904, their solicitors had orders to proceed at once to carry through the legal requirements regarding transfer in South Africa.

3. Other despatches to which I should call special attention in respect of these two Mineral Concessions are :—

(*a*) Despatch No. 106, of the 20th December, 1902, from the Resident Commissioner to the High Commissioner,† and the annexure thereto, and

* No. 79 in African (South) No. 746. † Enclosure 1 in No. 18 in African (South) No. 717.

(*b*) Despatch No. 162 of the 31st December, 1902, from the High Commissioner to the Resident Commissioner.*

from which it will be observed that:—

(1) Mr. Hallett Winmill, a representative of the South Rhodesia Goldfields Company, claimed that the latter company had been authorized by the Balkis Company to prospect over the areas covered by these two Concessions, i.e., throughout the whole of Gaseitsiwe's territory, and quoted Blue Book C. 5070, and pp. 41 and 42 of Blue Book C. 5524, as showing that these Concessions abutted on the Transvaal territory and included Ramoutsa, and

(2) that Lord Milner, then High Commissioner, directed that Mr. Winmill be made clearly to understand that the Government of the Protectorate had no objection to his prospecting under the terms of these two Concessions, and "over the whole extent of country covered by those Concessions" subject to any laws then in force, or which might thereafter be put in force, in the Protectorate. Mr. Winmill was informed accordingly.

4. Blue Book C. 5070, quoted by Mr. Winmill, is not among the records in the Resident Commissioner's Office—it is possibly the Blue Book containing a description of the earlier boundaries of the Bakwena and Bangwaketse tribes, as demarcated by Mr. Surveyor Melville (about 1880?). However that may be, it is a matter of common knowledge to pioneers, and among the natives themselves, that in or about the year 1880, the eastern boundary of the Bangwaketse territory abutted on the Transvaal and included Ramoutsa and the whole of what is now known as the Bamalete Native Reserve, the boundaries of which were fixed by Proclamation No. 28 of 1909.†

5. The other Blue Book quoted by Mr. Winmill, viz., C. 5524, contains (pp. 40 to 42) correspondence respecting a dispute between Ikaneng, Chief of the Bamalete tribe, and Gaseitsiwe "in whose country they (the Bamalete) were allowed to settle." Reference is made therein to a "Convention with Gaseitsiwe," to which Lieutenant A. J. Bethell obtained Ikaneng's signature on the 25th December, 1885. I have not been able to find a copy of that so-called "Convention with Gaseitsiwe"— one may possibly have been published in Blue Book C. 5070 alluded to in the foregoing paragraph, or in Blue Book C.4643‡ referred to on page 10 of White Book African (South) No. 537, but it is quite clear from Mr. J. S. Moffat's letter of 12th July, 1888, and from Lieutenant Bethell's statement quoted in Sir Sidney Shippard's covering despatch, that it was under compulsion, and contrary to his own convictions, that Ikaneng signed the so-called Convention, in terms of which he had to pay ten head of cattle yearly in consideration of "the peaceful tenancy of a portion of Gaseitsiwe's country."

6. As to whether Ikaneng ever made any of these payments of cattle, it is clear from the Report of the Concessions Commission of 1893 (p. 10 of White Book African (South) No. 537) that he made at least one such payment, in 1888, through the late Sir Hamilton Goold Adams (then Major Goold Adams). These are probably the ten oxen concerning which Ikaneng told Mr. Moffat (see letter of 12th July, p. 41 of C. 5524) that when he paid them to the Police "he had done so on the understanding that they were for the Government, and that he would not have paid them had he known that they were for Gaseitsiwe." It will also be observed (p. 10 of White Book 537) that although it appeared that Her Majesty's Government had always recognized Ikaneng as a petty Chief living under Bathoen, yet the paramountcy of the latter over the former was keenly contested in reference to concessions by divers concessionaires and was never admitted by Ikaneng nor has it ever been asserted by Bathoen. The Commission, however, considered it unnecessary to enter into the question, as the concessions were, on other grounds, not open to recognition.

7. Yet it is a great pity that, in face of the representations made by Mr. Moffat, the High Commissioner should have considered it "too late to re-open the question of the treaty between Gaseitsiwe and Ikaneng, negotiated by Lieutenant Bethell, or to discuss whether that treaty was, or was not, obtained by means of undue pressure,"§ because, as a matter of fact, the Bangwaketse had tried in 1881 or 1882 to expel from their territory, by force of arms, Ikaneng's Bamalete, who had moved thereto from Mankgodi (in the Bakwena Reserve), and, in one single battle, fought at Ramoutsa, the Bamalete had conquered that portion of Gaseitsiwe's territory which is now the Bamalete Reserve. It must be borne in mind that this was before a Protectorate

* Enclosure 2 in No. 18 in African (South) No. 717. † Not reprinted. ‡ Document E in No. 83 in C.4643. § See page 42 in C.5524.

was established, and, had the question been re-opened in 1888, it might have come to light that the principle, under which Ikaneng was ordered to pay rent for "the peaceful tenancy" of the ground which he and his people had *conquered*, is as foreign to native warfare, law and custom, as it is unknown among the civilized nations of Europe. Nor can it be argued that the Bangwaketse may, at some time or other, have re-conquered that ground, for there has been no further fighting between these two tribes from the date of that one battle in 1881, or 1882, to the present day.

8. Further, it is within my own knowledge that, from 1890 (year in which I joined the Bechuanaland Protectorate Service as Clerk to the Assistant Commissioner of the Southern Protectorate) Ikaneng was invariably dealt with by the Administration direct, and not through Bathoen, Chief of the Bangwaketse, and, if any further proof is required that Ikaneng was at that time—and had been all along—independent of Bathoen, I would state that it is also within my own knowledge—for I acted as Interpreter on that occasion—that, in September, 1895, Sir Sidney Shippard, Resident Commissioner of the Bechuanaland Protectorate, dealt direct with Ikaneng in the matter of the latter "ceding jurisdiction over the Bamalete territory to Colonel Frank Rhodes, D.S.O., in his capacity as the representative of the British South Africa Company," and that Ikaneng's right to do so, or, in other words, his "independence," was fully acknowledged by Her Majesty's Government when, a few days later, the High Commissioner for South Africa (the Right Honourable Sir Hercules Robinson, Baronet) affixed his signature to the Proclamation of the 18th day of October, 1895,* whereby the administration of the Bamalete territory was transferred to the British South Africa Company. I submit that these facts contribute an irrefutable proof that Ikaneng was independent, and had been so from the moment he emerged victorious from that one battle, and that the two Mineral Concessions subsequently granted by Gaseitsiwe cannot possibly be held to cover an area which had then ceased to be part of his territory.

9. I beg to place on record also that, whereas each of these two Concessions confers on the holders the right to select a mining area or mining areas not exceeding in the aggregate 400 square miles, the total area of the Bamalete Reserve is only 53,970 morgen, i.e., 179 square miles and 567 acres.

10. The only other Concessions which affected Bamalete territory were disallowed by the Secretary of State (see paragraph 23 of Secretary of State's despatch No. 16 of the 15th January, 1895†). The non-recognition of one of them involved a loss of £50 per annum to the Chief of the Bamalete, and, with a view to allaying discontent and promoting friendly relations, the British South Africa Company undertook to pay that Chief a yearly allowance of £50;‡ this has been paid up to date to successive Chiefs of the Bamalete.

11. In conclusion I would state that, pending a decision as to whether the two Mineral Concessions granted by Gaseitsiwe in 1887 and 1888 include prospecting, etc., in the Bamalete Reserve, a Mr. van den Heever is prospecting therein, under licence issued to him by the Balkis Company, Limited.

J. ELLENBERGER,
Government Secretary.

Mafeking.
21st August, 1923.

47126

No. 18.

THE HIGH COMMISSIONER to THE SECRETARY OF STATE.

(Received 25th September, 1923.)

(Confidential.)

MY LORD DUKE, High Commissioner's Office, Cape Town, 7th September, 1923.

WITH reference to my Confidential despatch of the 31st August§ and my Confidential despatch of yesterday,‖ I have the honour to transmit to Your Grace the accompanying copy of a further despatch (which reached me this morning) from the Resident Commissioner of the Bechuanaland Protectorate on the subject of the Gaseitsiwe and Kanya Concessions.

I have, &c.,
ARTHUR FREDERICK,
High Commissioner.

* Not reprinted. † No. 5 in African (South) No. 537. ‡ See p.p. 27-33 of African (South) No. 537. § No. 17. ‖ 47125/23: not printed. (This related to the position of the British South Africa Company in the European Blocks.)

Enclosure in No. 18.

(Confidential.)

Resident Commissioner's Office, Mafeking.
3rd September, 1923.

SIR,

I HAVE the honour to acknowledge the receipt of Your Royal Highness' Confidential despatch of the 31st August,* with enclosure, on the subject of the Gaseitsiwe and Kanya Concessions.

2. Mr. Ellenberger gratefully acknowledges Your Royal Highness' message in paragraph 2 of the despatch and requests me to say that, although, in his memorandum on these Concessions,† he drew attention to page 10 of White Book African (South) No. 537, he fears that he did not give sufficient prominence to Government Notice of the 27th March, 1888, referred to on that page and a copy of which is enclosed herewith, which clearly shows the views then held by the Government in the matter of the alleged paramountcy of Bathoen over Ikaneng, more particularly so in regard to the granting of concessions, but that this Notice does not in any way affect the views expressed by him as to Ikaneng's independence throughout, the more so because these two Concessions were not granted by Ikaneng but by Gaseitsiwe, who no longer exercised jurisdiction over the land which now constitutes the Bamalete Reserve.

3. Mr. Ellenberger further requests to be allowed to call attention to telegrams and despatches numbered respectively 18, 19, 20, 24 and its two enclosures, and also numbers 25 and 27, in Blue Book C. 7962, as showing that, although Ikaneng's hands had been tied by the Government, yet the latter, even on the eve (so to speak) of transferring to the British South Africa Company the administration of Ikaneng's territory, was still in considerable doubt as to whether Bathoen was or was not paramount over Ikaneng. It stands to reason that this particular question which (in enclosure 2 to No. 24) Sir Sidney Shippard was instructed to report upon in 1895, should have been decided *before* Ikaneng was, notwithstanding his protests, made to pay any cattle for his peaceful "tenancy" of the ground which he had conquered and before he was otherwise fettered, as shown in Government Notice of the 27th March, 1888.

4. Anyhow, as pointed out in the memorandum, Sir Sidney Shippard recognized in 1895 that Ikaneng was independent, and so did Her Majesty's Government, and it can only be hoped now that the Bamalete will not have to suffer any loss of their very limited territory through a regrettable mistake made nearly forty years ago, or through the grant to the British South Africa Company of any mineral rights other than "preferential."

I have, &c.,
J. C. MACGREGOR,
Resident Commissioner.

MINERAL CONCESSIONS IN THE BECHUANALAND PROTECTORATE.

THE following Form of Agreement for Mineral Concessions in the Bechuanaland Protectorate is published for general information :—

In future no mineral concessions in the Protectorate which depart in any essential particular from the terms and conditions laid down in the following form will be recognized as valid.

It is further notified for general information that no chiefs in the Bechuanaland Protectorate have any right or power to grant permissions to prospect for precious stones and minerals, mining leases or mineral concessions, except only Gaseitsiwe of Kanya, Chief of the Bangwaketze, Sechele of Molepolole, Chief of the Bakwena, and Khama of Shoshong, Chief of the Bamangwato; and in particular that alleged permits to prospect, dig for, and win precious stones and minerals, purporting to be issue by the minor Chief Ikaneng of Ramoutsa will be invalid, and will not be recognized by Her Majesty's Government, except in so far as the same may have been ratified and confirmed by the said Chief Gaseitsiwe, with the assent of Her Majesty's Government; and that the same rule will apply to similar prospecting licences, mining leases, or mineral concessions, purporting to be issued by the minor Chief

* Not sent to Colonial Office. † See Enclosure 2 in No. 17.

Lenchwe, except in so far as the same may have been ratified and confirmed by the said Chief Sechele with the consent of Her Majesty's Government as aforesaid.

J. ANCHITEL ASHBURNHAM,
Secretary.

Administrator's Office, Vryburg.
27th March, 1888.

54977

No. 19.

THE HIGH COMMISSIONER to THE SECRETARY OF STATE.

(Received 7.5 p.m., 13th November, 1923.)

TELEGRAM.

13TH NOVEMBER. Confidential. My despatch of 31st August, Confidential,* Gaseitsiwe and Kanye Concessions. Resident Commissioner, Bechuanaland Protectorate, has reported orally that information conveyed in McGregor's Confidential despatch of the 16th July,† regarding the payment now being made by Balkis Company to the Chief of the Bangwaketsi, is found to be incorrect and that payment now being made by Balkis Company to the Chief is at the rate of £30 per quarter in respect of both Concessions and not £1 10s. 0d. per quarter in respect of each. Resident Commissioner understands that at one time payment in respect of these two Concessions was made at the rate of £800 per annum on basis of £1 per square mile and that this was subsequently reduced either at once or gradually to £120 per annum which is still being paid. Resident Commissioner has promised further report on this point.—ARTHUR FREDERICK.

56638

No. 20.

THE BRITISH SOUTH AFRICA COMPANY to COLONIAL OFFICE.

[*Answered by Nos.* 23 *and* 29.]

Rhodesia House, 2, London Wall Buildings, London, E.C. 2.
23rd November, 1923.

SIR,

I AM directed to refer to my letter of the 15th October, 1919,‡ regarding an Agreement signed by the Chief Mathibi granting an extension to the 28th August, 1929, of the Moremi Concession in the Bechuanaland Protectorate.

The Colonial Office letter of the 13th February, 1920,§ informed my Directors that the then Secretary of State in agreeing to an extension of the Moremi Concession considered that the confirmation of the extension granted by Mathibi must be limited to a period of five years ending on 28th August, 1924. My Directors are anxious to retain the Concession in the hope that it may be possible to turn it to account so soon as circumstances permit, and I am therefore to inquire whether the Secretary of State will now confirm the extension to 28th August, 1929, as already granted by Mathibi.

I am, &c.,
A. P. MILLAR,
Secretary.

58923

No. 21.

THE HIGH COMMISSIONER to THE SECRETARY OF STATE.

(Received 3rd December, 1923.)

(No. 1318.)

MY LORD DUKE, High Commissioner's Office, Cape Town, 16th November, 1923.

WITH reference to Your Grace's despatch No. 278 of the 26th July‖ and my despatch No. 920 of the 10th August,¶ on the subject of the position of the British

* No. 17. † Enclosure 1 in No. 17. ‡ 59821/19: not printed. § 5954/20: not printed. ‖ 33824/23: not printed. (Forwarded letter from British South Africa Company asking for reply to No. 9.) ¶ No. 16.

South Africa Company as holders of certain concessions and preferential rights in the Bechuanaland Protectorate, I have the honour to enclose herewith a copy of a despatch from Mr. Ellenberger submitting his observations.

2. It will be observed that Mr. Ellenberger has confined his remarks to the question of mineral rights and has made no mention of the Company's preferential rights to land. But for his illness, I should have requested him to supplement his enclosed despatch by an expression of his views in respect of the land rights, but as he has been obliged to proceed on sick leave, I asked the Imperial Secretary to undertake the necessary search through old records and to prepare a memorandum on which I could base my recommendations. The amount of work involved is considerable, and Mr. Stanley has not yet been able to complete it. In view of the numerous other claims—many of them previously unexpected—which will be made upon his time up to the date of my departure from Durban, he fears that it will not be possible for him to deal further with this particular matter before the middle of December.

3. In the meanwhile, however, I may observe generally that I think it desirable to aim at a definite settlement with the Company in regard to both minerals and land, so as to eliminate the indeterminate and embarrassing factor of the preferential rights.

4. If it should be thought necessary to treat those preferential rights as not subject to any time limit their elimination would presumably be dependent upon the negotiation of an agreement under which the Company would receive an acceptable *quid pro quo*.

5. As regards the mineral rights, I should see no objection to such a compromise as has been suggested by Mr. Ellenberger, if the Company could be induced to accept it, and the Company's attitude might possibly be governed to some extent by the determination of the question whether the duration of its Mineral Concessions in the native reserves is terminable or indeterminate. For Mr. Feetham's views upon this point in respect of the Concession granted by the late Chief Khama I may refer to my despatch No. 301 of the 21st March.* If the Mineral Concessions actually held by the Company in the Reserves could be extinguished, I should not resist the recognition of a preferential claim by the Company to be allowed to tender for any mineral concessions which a native chief might hereafter propose to grant, provided always that the Secretary of State resumed complete freedom of discretion as to the grant or refusal of his confirmation of any such Concession.

6. If a free grant of the mineral rights over the Crown lands of the Protectorate were made to the Company, some protection of native interests would have to be provided. I am not at present sure, however, whether such protection need necessarily take the form of the establishment of new native reserves or whether the adaptation of some such provision in respect of removals of natives, as was made in Article 85 of the Southern Rhodesia Order in Council, 1898,† might not suffice. The question of the right of taxation in respect of these mineral rights might also arise, and I presume that the Crown would endeavour to reserve the right either to impose a special tax upon profits or to leave the Company's mining operations subject to the ordinary income tax law.

7. As regards the land, my present inclination would be to suggest an exchange of the Company's preferential rights for a free grant of a very large area of Crown land in the neighbourhood of Ghanzi. This is said to be good cattle country, and my impression is that not very much interference with native settlements would be likely to be involved. The native interests affected might perhaps be adequately safeguarded by provisions analogous to those of Articles 81 and 85 of the Southern Rhodesia Order in Council, 1898. I should not wish at present to alienate to the Company any of the Crown land along the Molopo River, as there is a possibility of that land being required in connexion with a tentative scheme for the establishment of cold storage works.

I have, &c.,
ARTHUR FREDERICK,
High Commissioner.

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* No. 8. † Not reprinted.

Enclosure in No. 21.

(H.C. 318.)

Resident Commissioner's Office, Mafeking,
17th October, 1923.

SIR,

I HAVE the honour to refer to Your Royal Highness' despatch No. 1843, of the 9th August,* and previous correspondence inviting the Resident Commissioner's observations upon the letter of the 9th April, from the British South Africa Company to the Colonial Office,† wherein the general question is raised of the future attitude of His Majesty's Government towards the utilization of the Company's various mineral concessions and the "preferential right to minerals and land in the Protectorate" to which it claims to be entitled.

2. In this connexion I would call special attention to the undermentioned correspondence:—

(*a*) Colonial Office to British South Africa Company, 31st March, 1911,‡
(*b*) Colonial Office to British South Africa Company, 30th December, 1911,§
(*c*) Colonial Office to British South Africa Company, 13th June, 1913,‖
(*d*) Colonial Office to British South Africa Company, No. 24890 of 6th September, 1913,¶

and I would suggest that the British South Africa Company be informed that the Chief Khama's death has not produced any change in the policy of His Majesty's Government; that the question of transferring any further portion or portions of the Bechuanaland Protectorate to the Company, for development, cannot now be entertained; and that, if the Company is willing to surrender all the mineral concessions held by it in the various Native Reserves of the Bechuanaland Protectorate, His Majesty's Government would, in exchange, be disposed to recognize the Company as owners of the minerals on the Crown lands of the territory, and to allow the Company to start prospecting and mining operations at once within such Crown lands, subject, however, to such further native reserves being first marked out as may be considered necessary by His Majesty's Government, and subject to such further reservations and conditions as are now and may hereafter be imposed by law.

3. I regret that Your Royal Highness' despatch was not replied to sooner.

I have, &c.,
J. ELLENBERGER,
Acting Resident Commissioner.

56638

No. 22.

THE SECRETARY OF STATE to THE HIGH COMMISSIONER.

[*Answered by No. 26.*]

(No. 435.)

Downing Street, 6th December, 1923.

SIR,

WITH reference to Viscount Milner's despatch No. 60 of the 18th of February, 1920,** I have the honour to transmit to Your Royal Highness, for your observations, a copy of a letter†† from the British South Africa Company applying for confirmation of the extension of the Moremi Concession to the 28th of August, 1929.

I have, &c.,
DEVONSHIRE.

56638

No. 23.

COLONIAL OFFICE to THE BRITISH SOUTH AFRICA COMPANY.

Downing Street, 6th December, 1923.

SIR,

I AM directed to acknowledge the receipt of your letter of the 23rd November†† asking for confirmation of the extension of the Moremi Concession to the 28th of August, 1929, and to request you to inform your Directors that he is communicating with the High Commissioner for South Africa on the subject.

I am, &c.,
C. T. DAVIS.

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* Enclosure 4 in No. 16. † No. 9. ‡ No. 45 in African (South) No. 969. § No. 104 in African (South) No. 969. ‖ No. 11 in African (South) No. 1003. ¶ No. 23 in African (South) No. 1003. ** 5954/20: not printed. †† No. 20.

13681

No. 24.

THE BRITISH SOUTH AFRICA COMPANY to COLONIAL OFFICE.

[*Answered by No.* 31.]

Rhodesia House, 2, London Wall Buildings, London, E.C.2.
21st March, 1924.

SIR,

I AM directed to refer to the Agreement dated 22nd July, 1898, of which I enclose a copy for reference, between Linchwe, Chief of the Bakhatla tribe in the Bechuanaland Protectorate, and Mr. Julius Weil, under which Linchwe granted certain prospecting and mining rights within his territory.

In December, 1898, the British South Africa Company acquired from Mr. Julius Weil a half interest in the Concession and the Linchwe Concession Company, Limited, was formed with a nominal capital of £150,000, of which 25,000 shares of £1 each have been issued for working capital. Some prospecting work has been done and the mining area of 100 square miles granted by the Concession has been located, but up to the present no minerals of economic value have been discovered. The rent of £100 a year has been duly paid to date in accordance with the terms of the Concession.

During last year the Linchwe Concession Company was approached by parties who wished to prospect, not only over the mining area of 100 square miles held by the Linchwe Company, but over the balance of Linchwe's territory. Representations were accordingly made to the Acting Chief who has granted a new Concession (copy attached), which it is understood was signed on 23rd October, 1923, giving the Linchwe Company exclusive rights of prospecting over the whole of his territory for two years with the right of marking out 100 square miles for mining operations. On the selection of this area the existing area of 100 square miles will be abandoned and the annual rental payable to the Chief will be increased from £100 to £200 a year.

After some further negotiations the Directors of the Linchwe Concession Company have decided to accept the new Concession as granted by the Acting Chief and are now making arrangements for the adequate prospecting of the territory and the selection of new mining areas. They desire therefore that the new Concession should be confirmed and ratified by His Majesty's Government.

In accordance with the terms of your letter of the 26th July, 1898,* and subsequent correspondence the British South Africa Company has preferential rights in respect of the acquisition of concessions in the Bechuanaland Protectorate and the Government is pledged not to recognize concessions to other parties until the Company should have had the option of acquiring them. The action however of the Linchwe Concession Company in accepting the new Concession was taken with the concurrence of the British South Africa Company and I am to ask therefore that the Concession may be confirmed and ratified.

As the Concession is for a short period and as, until it is ratified, the rights of the Concessionaires are not fully validated my Directors hope that the matter may receive early consideration.

I am, &c.,
A. R. HEATHCOTE,
Assistant Secretary.

Enclosure 1 in No. 24.

AGREEMENT made by and between Linchwe Chief of the Bakhatla tribe of the one part, hereinafter called the Chief, and Julius Weil of the other part, hereinafter called the Grantee.

The Chief grants and concedes to the Grantee, his heirs, executors, administrators or assigns the sole and exclusive right for a period of five years from the date of signing this document to prospect for precious stones, gold, silver, platinum, and other minerals throughout his territory provided no prospecting or digging for

* No. 263 in African (South) No. 559.

precious stones or minerals shall take place on any road nor within 200 yards of any village, kraal, house, hut, nor upon any land under cultivation without the consent of the Chief.

The Chief further grants and concedes to the Grantee, his heirs, executors, administrators or assigns the further right within the period named to mark off for mining operations one or more areas not to exceed in the aggregate 100 square miles together with such wood, water and other easements within the limits of such mining concession or demise as may be necessary for the due working thereof. The areas so selected by the Grantee, his heirs, executors, administrators or assigns shall not interfere with any road, village, kraal, house, hut or cultivated lands without the consent of the Chief being first had and obtained. Compensation, when required, to be agreed upon mutually or referred to arbitration.

In consideration for the rights so obtained the Grantee agrees to pay the Chief or his successors the sum of £100 sterling per annum.

The said Grantee promises and agrees to do all in his power to discourage the introduction of intoxicating liquors into the area or areas aforesaid.

The Concession to be subject to such laws and taxation as may be now or hereafter in force in the Bechuanaland Protectorate.

The Chief and the Grantee further mutually agree that on the ratification of this Concession by Her Majesty's Government all prior mineral concessions or agreements pertaining thereto between the two parties shall become null and void and be no longer binding on either side.

In witness whereto the parties thereto have hereunto affixed their signatures at Mochudi this 22nd day of July in the year Eighteen hundred and ninety-eight, and in the presence of the subscribing witnesses :—

As Witnesses:

RAMONO.
SENGALE.
C. RILEY.
E. G. RAUBENHEIMER.

LENTONE.
JULIUS WEIL.

The above Concession has been approved by Her Majesty's Secretary of State for the Colonies subject to the condition that the areas to be marked off for mining operations shall not exceed four in number nor exceed in the aggregate one hundred square miles.

W. G. BUTLER,
Lieut.-Gen.,
Acting High Commissioner.

Cape Town,
22nd December, 1898.

Enclosure 2 in No. 24.

AGREEMENT made by and between Isang Pilane, Acting Chief of the Bakhatla tribe of the one part, hereinafter called the Chief, and the Linchwe Concession Company, Limited, of the other part, hereinafter called the Grantees.

The Chief grants and concedes to the Grantees their heirs, executors, administrators or assigns the sole and exclusive right for a period of two years from the date of signing this document to prospect for precious stones, gold, silver, platinum and other minerals throughout his territory provided no prospecting or digging for precious stones or minerals shall take place on any road or within 200 yards of any kraal, house, hut, nor upon any land under cultivation without the consent of the Chief.

The Chief further grants and concedes to the Grantees their heirs, executors, administrators or assigns the further right within the period to mark off for mining operations one or more areas not to exceed in the aggregate 100 square miles, provided however on their proceeding to define such area or areas the area already defined and held by the Linchwe Concession Company, Limited, shall be abandoned and revert to the Chief and shall not longer be regarded as a mining area unless the Chief shall again give his consent in writing for same to be again prospected.

The area so selected by the Grantees their heirs, executors, administrators or assigns shall not interfere with any road, village, kraal, house, hut or cultivated lands without the consent of the Chief being first had and obtained. Compensation, when required, to be agreed upon mutually, or referred to arbitration.

In consideration for the rights so further obtained the Grantees agree to increase the annual payment due to the Chief under the original deed of Concession from £100 per annum to £200 per annum when they register the new area or areas and abandon the present area now registered as the Linchwe Concession Company, Limited, Mining Area.

The said Grantees promise and agree to do all in their power to discourage the introduction of intoxicating liquors into the area or areas aforesaid.

The Concesaion to be subject to such laws and taxation as may now or hereafter be in force in the Bechuanaland Protectorate.

In witness whereof the parties hereto have hereunder affixed their signatures in the presence of the subscribing witnesses.

ISANG PILANE,
Acting Chief of the Bakgatla.

Witnesses:
1. MOLEFE PILANE.
2. MOLEFE KGARI PILANE.

14194

No. 25.

THE HIGH COMMISSIONER to THE SECRETARY OF STATE.

(Received 25th March, 1924.)

(Confidential.)

SIR, High Commissioner's Office, Cape Town, 5th March, 1924.

WITH reference to His Royal Highness Prince Arthur of Connaught's Confidential telegram of the 13th November, 1923,* I have the honour to transmit herewith a copy of a despatch from the Resident Commissioner of the Bechuanaland Protectorate on the subject of the Gaseitsiwe and Kanye Concessions.

I have, &c.,
ATHLONE,
High Commissioner.

Enclosure in No. 25.

(Confidential.)

Resident Commissioner's Office, Mafeking.
1st March, 1924.

MY LORD,

I HAVE the honour to refer to His Royal Highness Prince Arthur of Connaught's despatch Confidential No. 2250,† of the 15th November last, transmitting to me a copy of a telegram to the Secretary of State* on the subject of the Gaseitsiwe and Kanye Concessions, and to inform Your Excellency that it has been found impossible to obtain any definite information as to how the payment now being made by the Balkis Company, Limited, to the Chief of the Bangwaketse was altered from 30s. per quarter in respect of the two Concessions (i.e., 5s. a month in respect of each, in terms of the Concessions) to £30 per quarter.

2. From information obtained from Mr. H. C. Taylor, an old resident of the Bangwaketse Reserve and local agent of the Balkis Company at Kanye, it is clear that the payments to the Chief are effected through him, and it would appear that when the original concessionaires ceded their rights to the Balkis Company, the latter, while actually working, paid £800 per annum to the Chief, and that when operations ceased that sum was gradually reduced; also that the agreement reducing the amount from £200 to £120 per annum, and providing for the payment of some royalty to the Chief in the event of the Company resuming work, was entered into with the late Chief Bathoen by one Watkins on behalf of the Balkis Company, Limited.

3. The present Chief of the Bangwaketse has no record however of these alleged transactions, nor can any papers on the subject be traced in my office, nor can the Assistant Resident Commissioner and myself remember having heard of such transactions at the time. The Secretary of the Balkis Company in Johannesburg (a

* No. 19. † Not received in Colonial Office.

Mr. D. P. C. Blair, of 1, Sauer's Buildings, Loveday Street), whom I approached on the subject, is also unable to give the desired information, but he has advised me that he has written to London for it, and I will again address Your Excellency on the subject on receipt of the further communication which he has promised.

I have, &c.,
J. ELLENBERGER,
Resident Commissioner.

15392

No. 26.

THE HIGH COMMISSIONER to THE SECRETARY OF STATE.

(Received 31st March, 1924.)

[*Answered by No.* 28.]

(No. 224.)

SIR, High Commissioner's Office, Cape Town, 14th March, 1924.

I HAVE the honour to acknowledge the receipt of the Duke of Devonshire's despatch No. 435 of the 6th December* with reference to the request of the British South Africa Company for confirmation of the extension of the Moremi Concession to the 29th of August, 1929, and to enclose herewith a copy of a despatch from the Resident Commissioner of the Bechuanaland Protectorate.

2. In his despatch No. 460 of the 31st October, 1919,† Lord Milner expressed the view that on general principles it seemed desirable to terminate concessions of this kind when a fair opportunity offered, and in his despatch No. 318 of the 17th October last‡ (see my predecessor's despatch No. 1318 of the 16th November§) Mr. Ellenberger suggested that, if the Company were to surrender all its mineral concessions in the various Native Reserves of the Protectorate, His Majesty's Government might, in exchange and subject to certain conditions, be disposed to recognize the Company as owners of minerals on the Crown lands of the territory. I do not know how Mr. Ellenberger's suggestion would be regarded either by His Majesty's Government or by the Company, and the question whether or not the extension of the Moremi Concession should be confirmed would seem to depend upon the future policy to be adopted in regard to mineral development generally in the Protectorate, and particularly in the Native Reserves. If an effort is to be made to terminate mineral concessions in the Native Reserves, the present would appear to be an opportunity for doing so in the Batawana Reserve, but if His Majesty's Government should not wish at this juncture to initiate any new departure in regard to mineral policy generally and the position of the British South Africa Company in particular, I should not think it necessary to offer opposition to the extension of the Moremi Concession until the 28th August, 1929, subject to the stipulations which were attached to the confirmation of the last previous extension.

I have, &c.,
ATHLONE,
High Commissioner.

Enclosure in No. 26.

(H.C. 95.)

Resident Commissioner's Office, Mafeking,
6th March, 1924.

MY LORD,

I HAVE the honour to acknowledge the receipt of Rear-Admiral Sir Rudolf Bentinck's despatch No. 3067 of the 31st December‖ regarding an application by the British South Africa Company for confirmation of the extension of the Moremi Concession to the 28th August, 1929, and in accordance with His Excellency's request to submit my observations thereon.

2. It has always seemed to me that operations under concessions such as this one which grant the right of prospecting and mining in a Native Reserve might involve serious disturbance of the ordinary avocations and general interests of the native inhabitants and deprive them of valuable portions of their land. I think, therefore, that it would be a great pity if, now that the affairs of the Batawana Tribe

* No. 22. † 50021/19: not printed. ‡ Enclosure in No. 21. § No. 21. ‖ Not printed.

have reached a fairly settled state, further opportunity were afforded to the Concessionaires to work this Concession. They have really had ample time in which to do so, and, after careful consideration, with due regard to the interests of Chief Mathiba and the Batawana Tribe, I regret my inability to recommend a further extension of the Concession.

3. I regret the delay which has occurred in replying to the despatch.

I have, &c.,
J. ELLENBERGER,
Resident Commissioner.

1916]

No. 27.

THE HIGH COMMISSIONER to THE SECRETARY OF STATE.

(Received 23rd April, 1924.)

(Confidential (6).)

High Commissioner's Office, Cape Town, 4th April, 1924.

SIR,

WITH reference to my Confidential despatch of the 5th March* I have the honour to transmit herewith a copy of a further despatch from the Resident Commissioner of the Bechuanaland Protectorate on the subject of the Gaseitsiwe and Kanye Concessions.

I have, &c.,
ATHLONE.
High Commissioner.

Enclosure in No. 27.

(Confidential (2).)

Resident Commissioner's Office, Mafeking.
29th March, 1924.

MY LORD,

WITH reference to my Confidential despatch of the 1st March† on the subject of the Gaseitsiwe and Kanye Concessions, I have the honour to transmit herewith, for Your Excellency's information, a copy of a letter from the Secretary of the Balkis Company in Johannesburg, enclosing a copy of a letter received by him from the Head Office of the Company in London furnishing information as to the increase in the payment made to the Chief of the Bangwaketse in respect of the two Concessions, from 30s. to £30 a quarter.

I have, &c.,
J. ELLENBERGER,
Resident Commissioner.

1, Sauer's Buildings, Loveday Street, Johannesburg.
27th March, 1924.

Balkis Limited.
Bangwaketsi and Kanye Concessions.

SIR,

FURTHER in reference to your favour of 8th January, 1924, I have now heard from the Balkis, Limited, Secretary.

I enclose copy of a letter he wrote to me in reply to queries made to me by a native Solicitor here who said he was acting for the Chief. However, when I asked for his authority he did not reply.

The rent of £30 per quarter has been paid for 15 years. This was paid by the predecessors of Balkis, Limited.

I am, &c.,
D. P. C. BLAIR.

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* No. 25. † Enclosure in No. 25.

274, Gresham House, Old Broad Street, London, E.C. 2.
7th February, 1924.

Prospecting.
Bechuanaland Concession.

DEAR SIR,

REFERRING again to your letter dated 21st December, and our acknowledgment of the 16th January, we have now examined the Concession under which we exercised the right of issuing Prospecting Licences and give you below the salient points in such Concessions:—

Two Concessions were granted dated respectively the 13th October, 1887, and the 29th March, 1888. The Concessions were granted by Gaseitsive, described as Chief of the Bangwaketsi. The first Concession was granted to Messrs. Adams Sedgwick Woolley, James Arthur Nicolls and Gregor Riesle, and the second to Mr. John Williams, of Kanye.

These Concessions were subsequently acquired by two Companies, i.e., Kanya Exploration Company, Limited, and the Bangwaketsi Concessions, Limited, and Balkis Limited acquired the said Concessions from such Companies by Assignment.

The Concessions granted to the Concessionaires the following rights:—

The right to prospect for precious stones and other minerals through the Chief's territory, with certain exceptions as to properties near villages, kraals and huts and land under cultivation, and our Concession gave the right to select a mining area or areas extending in the aggregate to 400 square miles, making 800 square miles in all.

There is no time limit during which such selection may be made but on any selection of an area for mining purposes the head rental of £1 per square mile is payable to the Chief, in addition to the sum of 5s. per month payable in advance and a Royalty of 2½ per cent. per annum payable annually upon the gross value of any precious stones and minerals found or won by the said Grantees on any area, or areas, demarcated by virtue of the Concession.

In each Concession the Chief Gaseitsive granted the rights named above on behalf of himself, his heirs, successors and assigns.

No area for mining purposes has, up to the present time, been selected although prospecting in accordance with the terms of the Concession has occasionally been carried out and, as you are aware, more extensive prospecting operations under the Licences which you have granted have been conducted recently.

Some years ago some suggestion arose as to the payment to the Chief under the terms of the Concession and after some negotiations a compromise was effected under which the sum of £120 per annum was agreed to be paid in satisfaction of all claims, pending the demarcation of any specific areas for mining purposes. Strictly speaking the only payment which can be claimed under each Concession is that of 5s. per month.

The Concessions have been recognized by the High Commissioner and the British South Africa Company.

We hope the above information will be sufficient to satisfy Mr. Montsion in regard to the information asked for by him, in addition possibly to the plan which you will be good enough to send him. We think perhaps you had better also send him copies of the Licences which you are granting.

Yours, &c.,
H. LL. WATKINS,
Secretary.

15392

No. 28.

THE SECRETARY OF STATE to THE HIGH COMMISSIONER.

[*Answered by Nos.* 39 *and* 41.]

(No. 139.)

Downing Street, 26th April, 1924.

MY LORD,

I HAVE the honour to acknowledge the receipt of your despatch No. 224 of the 14th March.* regarding the request of the British South Africa Company for confirmation of the extension of the Moremi Concession to the 29th August, 1929.

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* No. 26.

2. I enclose for your information a copy of a letter which has been addressed to the Company* dealing with this matter, and also with the question of Sekgoma's desire to terminate the Company's Concession in the Bamangwato Reserve, which formed the subject of His Royal Highness Prince Arthur of Connaught's despatch No. 560 of the 18th May, 1923† and connected correspondence. The general suggestions made by His Royal Highness in his subsequent despatch No. 1318 of the 16th November, 1923,‡ for a settlement with the Company will receive further consideration in the light of the Company's reply to the enclosed letter.§ In this connexion I should be glad to learn whether Mr. Stanley was able, before taking up his new duties, to complete the Memorandum referred to in the 2nd paragraph of the High Commissioner's despatch of the 16th November.‖

I have, &c.,
J. H. THOMAS.

15392

No. 29.

COLONIAL OFFICE to THE BRITISH SOUTH AFRICA COMPANY.

[*Answered by Nos.* 32 *and* 35.]

Downing Street, 26th April, 1924.

SIR,

I AM directed by Mr. Secretary Thomas to request you to inform your Directors that he has had under consideration, in consultation with the High Commissioner for South Africa, your letter of the 9th April, 1923,¶ regarding the question of the development of the Company's concession in the Bechuanaland Protectorate.

2. Your Directors suggest that the death of Chief Khama may have produced a new situation which would enable the Company to pursue the development of their mineral concession in the Bamangwato Reserve, but I am to state that so far from this being the case the new Chief Sekgoma has expressed considerable anxiety at the prospect of mining operations taking place in his Reserve, where he states that the cattle are every day increasing and the establishment of new villages would leave no space for his people or their live stock. Sekgoma has expressed the desire in the circumstances that the concession granted to the Company by Khama should be cancelled, and the High Commissioner for South Africa has been advised that it is open to the Chief under the terms of the Agreement of 1893 to terminate the agreement after reasonable, say one year's notice. Subject to any observations which your Directors may wish to offer it is proposed to inform Sekgoma that he is entitled to take steps accordingly.

3. I am to add that the Secretary of State does not feel that it is desirable to extend further the mineral concessions held in the other Native Reserves of the Protectorate, and he is unable therefore to confirm the extension of the Moremi Concession which was applied for in your letter of the 23rd November last.**

I am, &c.,
E. J. HARDING.
(For the Under-Secretary of State.)

13681

No. 30.

THE SECRETARY OF STATE to THE HIGH COMMISSIONER.

[*Answered by No.* 38.]

(No. 140.)

Downing Street, 26th April, 1924.

MY LORD,

I HAVE the honour to transmit to you the accompanying copies of correspondence†† with the British South Africa Company regarding a new Concession which has been obtained by the Linchwe Concession Company from the Acting Chief of the Bakhatla Tribe in the Bechuanaland Protectorate. In this connexion I may refer to my despatch No. 139 of the 26th of April‡‡ forwarding a copy of a separate letter which has been addressed to the Company on the subject of their Concessions in the Native Reserves of the Protectorate.

* No 29. † No. 13. ‡ No. 21. § No. 29. ‖ No. 21. ¶ No. 9. ** No. 29. †† Nos. 24 and 31. ‡‡ No. 28.

2. I should be glad to receive your views regarding the question of the confirmation of this new Concession and in particular I should wish to know whether it can be regarded as a valid grant seeing that the Concession is signed only by the Acting Chief and does not appear to have been made with the advice or consent of any other representatives of the Tribe.

I have, &c.,
J. H. THOMAS.

13681

No. 31.

COLONIAL OFFICE to THE BRITISH SOUTH AFRICA COMPANY.

[*Answered by Nos.* 32 *and* 35.]

Downing Street, 26th April, 1924.

SIR,

I AM directed to acknowledge the receipt of your letter of the 21st March,* submitting for confirmation a new Concession which has been obtained by the Linchwe Concession Company from the Acting Chief of the Bakhatla Tribe in the Bechuanaland Protectorate.

2. The Secretary of State is communicating with the High Commissioner for South Africa on the subject, but for the reasons given in the separate letter† which has been addressed to you regarding the Company's Concessions in the Protectorate, the Secretary of State can hold out little prospect of being able to confirm the Concession now submitted.

I am, &c.,
E. J. HARDING.
(For the Under-Secretary of State.)

20815

No. 32.

THE BRITISH SOUTH AFRICA COMPANY to COLONIAL OFFICE.

[*Answered by No.* 34.]

Rhodesia House, 2, London Wall Buildings, London, E.C. 2.
1st May, 1924.

SIR,

I AM directed to acknowledge the receipt of your letters‡ regarding the mineral rights of the British South Africa Company in certain portions of the Bechuanaland Protectorate.

My Directors will take an early opportunity of submitting their views on this subject fully to the Secretary of State, and they presume that in the meanwhile no steps will be taken to communicate with Sekgoma regarding the advice which the High Commissioner has received to the effect that it is open to Sekgoma to terminate the Khama Concession. My Directors would, however, be glad if they could be informed of the grounds on which this advice is based. The Agreement of 1893 itself, as the Secretary of State is aware, contains no provision for its termination otherwise than in the event of failure by the Company to make any payment due under the Agreement.

I am, &c.,
A. R. HEATHCOTE,
Assistant Secretary.

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* No. 24. † No. 29. ‡ Nos. 29 and 31.

PUBLIC RECORD OFFICE, LONDON

22718

No. 33.

THE HIGH COMMISSIONER to THE SECRETARY OF STATE.

(Received 13th May, 1924.)

(Confidential (2).)

SIR, High Commissioner's Office, Cape Town, 25th April, 1924.

WITH reference to my predecessor's Confidential despatch of the 31st August last* in paragraph 4 of which His Royal Highness requested instructions as to the reply to be sent to the inquiry by the Local Secretary of the British South Africa Company in his letter of the 13th February, 1923 (see my predecessor's despatch Confidential (2) of the 17th May, 1923†) as to the competency of Chief Seboko to grant any mineral concession over the Bamalete Reserve, I have the honour to enclose herewith a copy of a despatch from the Resident Commissioner of the Bechuanaland Protectorate reporting that the Local Secretary of the Company has now inquired as to the present position of this matter.

I have, &c.,
ATHLONE,
High Commissioner.

Enclosure in No. 33.

(Confidential.)

Resident Commissioner's Office, Mafeking.
14th April, 1924.

MY LORD,

WITH reference to paragraph 2 of my predecessor's Confidential despatch of the 10th May, 1923,‡ and subsequent correspondence on the subject of the subsidy paid by the British South Africa Company to the Chief of the Bamalete, I have the honour to inform your Excellency that the Local Secretary of the British South Africa Company at Cape Town has written inquiring as to the position of this matter and that a reply has been sent stating that I have not yet received your instructions.

I have, &c.,
J. ELLENBERGER,
Resident Commissioner.

25131

No. 34.

COLONIAL OFFICE to THE BRITISH SOUTH AFRICA COMPANY.

[*Answered by No.* 35.]

SIR, Downing Street, 29th May, 1924.

I AM directed to acknowledge the receipt of your letter of the 1st May§ regarding the mineral concessions of the British South Africa Company in the Bechuanaland Protectorate, and to request you to inform your Directors that the advice given to the High Commissioner for South Africa by his legal adviser with regard to the Khama Concession was based on the view that for the purpose of ascertaining the duration of such an Agreement, for the period of which no definite time is fixed, recourse should be made to the rule applied under Roman Dutch law in such circumstances to leases.

2. As regards communication with Sekgoma on the subject, the Secretary of State understands that the advice given to the High Commissioner was communicated by the Resident Commissioner to Sekgoma.

I am, &c.,
C. T. DAVIS.

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* No. 17. † No. 14. ‡ Enclosure 1 in No. 14. § No. 32.

26980

No. 35.

THE BRITISH SOUTH AFRICA COMPANY to COLONIAL OFFICE.

[*Answered by No.* 37.]

Rhodesia House, 2, London Wall Buildings, London, E.C. 2.
5th June, 1924.

SIR,

I AM directed to acknowledge the receipt of your letter of the 29th May* respecting the Khama Concession. My Directors regret that a communication should have been made to Sekgoma of a kind which they had been led, by the last sentence of the second paragraph of your letter of the 26th April,† to believe would not be made to him pending receipt by the Secretary of State of their observations. On this subject my Directors are in communication with their representatives in South Africa and will address the Secretary of State further in due course.

I am, however, to refer to the third paragraph of your letter of the 26th April† relating to the Moremi Concession, and to your letter of the same date‡ relating to the Linchwe Concession. In these cases no question as to the willingness of the chiefs to grant the concessions of which confirmation is asked arises.

As regards the Moremi Concession, my Directors submit, especially as the British South Africa Company has admittedly a preferential right to acquire any concessions which native Chiefs in the Bechuanaland Protectorate may be able and willing to grant, and as there is no reason to suppose that Mathibi, who would receive valuable consideration for it, is any less willing now than he was in 1919 that the Concession should be extended to 1929, that they might reasonably expect the Secretary of State to be willing to sanction the extension of the Concession, unless there is anything in the Concession itself to which valid objection may be taken. They submit that they are entitled to assume that no such objection can be taken to it, since the Concession and its various extensions have been ratified on numerous occasions by the Secretary of State since it was originally granted in 1889.

As regards the Linchwe Concession, my Directors submit that similar considerations apply to the proposal made in their letter to the Colonial Office of the 21st March last.§ The adoption of the proposal would mean that the Linchwe Company would have the right to prospect for minerals for a limited period, and to mark out an area of 100 square miles in substitution for that now held by them. No increase of the total area to be held by the Linchwe Company is contemplated. If the new area were marked out it would be held on practically the same terms as the present area, which would then be abandoned, and the Chief would receive a rental increased from the present amount of £100 a year to £200 a year.

I am, &c.,
A. P. MILLAR,
Secretary.

28610

No. 36.

THE HIGH COMMISSIONER to THE SECRETARY OF STATE.

(Received 16th June, 1924.)

(No. 411.)

SIR, High Commissioner's Office, Cape Town, 26th May, 1924.

WITH reference to my telegram of to-day,‖ I have the honour to transmit herewith a copy of a Minute by my Legal Adviser regarding the termination of the mineral concession which was granted by the late Chief Khama in 1893 to the British South Africa Company.

I have, &c.,
ATHLONE,
High Commissioner

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* No. 34. † No. 29 ‡ No. 31. § No. 24. ‖ 25131/24: not printed. (Communicated substance of enclosure in No. 36.)

PUBLIC RECORD OFFICE, LONDON

Enclosure in No. 36.

THE IMPERIAL SECRETARY,

I AM in agreement with the opinion expressed by Mr. Feetham. The concession in question in my opinion is a contract and not an alienation. If it were the latter it would of course exist in perpetuity like any other alienation, but it is not. It is not a lease but an innominate contract of a character analogous to that of lease and like all contracts can be terminated on proper notice. As to what would constitute proper notice in this case, I think the fact that payments were to be made monthly once they commenced would indicate that, strictly speaking, one month's notice would suffice.

See the case of Van Raht *v.* Van Breda, 20 S.C., 73, quoted by Mr. Feetham.

In the case of L. and S.A. Exploration Co. *v.* Murphy, H.C.G. at P. 3.30, Lawrence J. said :—

> "Apart from statutory provision it would presumably be competent to a claim-holder paying a monthly licence, as to any other monthly tenant, to give a month's notice in the proper quarter of his intention to terminate his holding, and until he did so, like every other tenant, he would be liable for the monthly licence money or other payment for the use and occupation of the ground in his possession."

It seems to me that in this case either this is a grant in perpetuity or a contract terminable either at will or at a month's notice and in my opinion it is the latter.

LESLIE BLACKWELL.

23rd May, 1924.

26980

No. 37.

COLONIAL OFFICE to THE BRITISH SOUTH AFRICA COMPANY.

Downing Street, 20th June, 1924.

SIR,

I AM directed to acknowledge the receipt of your letter of the 5th of June* regarding the mineral concessions of the British South Africa Company in the Bechuanaland Protectorate, and to request you to inform your Directors that he notes that a further communication may be expected from them in respect of the Khama Concession.

As regards the Moremi Concession, I am to say that the Secretary of State's decision in this case was based upon the general view, which is held by the Bechuanaland Protectorate Administration and is shared by the Secretary of State, that the carrying on of mining operations by concessionaires in the Native Reserves was undesirable in the interests of the natives. The Secretary of State was advised that after the lapse of so long a period from the time when this concession was approved he could not be considered as now under any obligation to agree to its further extension.

In the case of the Linchwe Concession the Secretary of State is still awaiting the views of the High Commissioner for South Africa, and pending the receipt of the High Commissioner's reply he does not wish to take a final decision†; but I am to observe that the considerations set out in the previous paragraph apply generally in respect of this concession also.

I am, &c.,
C. T. DAVIS.

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* No. 35. † See page 90.

29755

No. 38.

THE HIGH COMMISSIONER to THE SECRETARY OF STATE.

(Received 23rd June, 1924.)

(No. 441.)

High Commissioner's Office, Cape Town, 6th June, 1924.

SIR,

WITH reference to your despatch No. 140 of the 26th April,* I have the honour to forward herewith copies of two despatches dated 2nd and 4th of June from the Resident Commissioner of the Bechuanaland Protectorate, together with a copy of my reply, on the subject of the new Concession which the Linchwe Company is endeavouring to obtain in the Bakgatla Reserve.

2. It seems clear to me that, as a result of prospecting operations, the interested companies have come to the conclusion that no valuable minerals are likely to be discovered in the area of 100 square miles near Mochudi, and that they are therefore anxious to conduct investigations elsewhere. I am of opinion that, if they are refused any further concessions in the Bakgatla Reserve, they will prefer to abandon their existing claims rather than continue to pay for mineral rights which they are satisfied are of no value.

3. The whole question of the disposal of mineral rights held by various companies in the Native Reserves has been receiving my attention, and I hope very shortly to be able to acquaint you with the conclusions at which I have arrived. But I am satisfied that it is in the interests of the natives to adopt a policy which aims at the gradual elimination of these concessions, and for that reason I am in full agreement with your views as conveyed to the British South Africa Company in paragraph 2 of Mr. Harding's letter of the 26th April† enclosed in your despatch under reference.

I have, &c.,
ATHLONE,
High Commissioner.

Enclosure 1 in No. 38.

(H. C. 220.)

Resident Commissioner's Office, Mafeking.
2nd June, 1924.

MY LORD,

I HAVE the honour to acknowledge the receipt of Your Excellency's despatch No. 1113 of the 22nd May enclosing for my observations a copy of a despatch from the Secretary of State on the subject of a new Concession obtained by the Linchwe Concession Company, Limited, from the Acting Chief of the Bakgatla, and to report as follows :—

1. On 8th September, 1923, Mr. W. A. Rosenberg—who is a nephew of Mr. Julius Weil and a partner in the firm of Messrs. S. Kemp and Company, Limited, General Merchants, Mafeking—came to see me at my office with regard to prospecting for minerals, etc., in the Bakgatla Reserve, and, as a result, I addressed to him the personal letter a copy of which I enclose‡ together with a copy of Mr. Vickerman's two letters referred to in the last paragraph thereof.

2. On the 17th April, last, Mr. Rosenberg again called on me and a copy of the memorandum which I prepared immediately after this interview is enclosed§ herewith. Shortly after he had left me he sent me the letter a copy‖ of which is also annexed hereto. In acknowledging the receipt thereof I said the matter was receiving attention. I do not enclose a copy of the Agreement referred to therein as, except for a few unimportant clerical errors, it is similar to that transmitted by the Secretary of State.

3. I append also a copy of the undermentioned documents, viz. :—

(*a*) Minute from me to the Resident Magistrate, Gaberones¶;
(*b*) The Resident Magistrate's reply**;
(*c*) Further Minute from me to the Resident Magistrate, Gaberones††.

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* No. 30. † No. 29. ‡ Annex 1. § Annex 2. ‖ Annex 3. ¶ Annex 4. ** Annex 5. †† Annex 6.

I do not enclose a copy of the Minutes which accompanied (*b*) for they are somewhat lengthy and they only tend to corroborate the Magistrate's statement that the idea of the Chief and people in granting this new Concession is that they are accepting the lesser of two evils. One point in the statement made by the Chief before the Magistrate in the Kgotla deserves attention however, and that is a request by him that the Agreement be amended to include payment to him and his successors of 2½ per cent. of the net profits accruing to the grantee from the working of the precious stones, gold, silver and platinum, and 5 per cent. of the net profits accruing from the working of the other minerals, or, alternatively, similar percentages on the gross income accruing to the grantee in the event of any of the areas being worked on tribute by other parties or otherwise, whichever is the greater, *i.e.*, £200 *per annum or the percentages above mentioned*, in the event of the Linchwe Concession Company, Limited, starting to dig for precious stones, gold, etc.

4. Chief Isang came to see me at Mafeking on 22nd May in respect to various matters, including a question regarding the British South Africa Company's "preferential" rights to mineral concessions in the Bechuanaland Protectorate and I took the opportunity to discuss this new Agreement personally with him. I enclose an extract,* bearing on these two subjects, of the notes taken at the interview. I attach also a copy† of a further Minute which I subsequently addressed to the Resident Magistrate at Gaberones.

5. Your Excellency will observe from these enclosures that the Chief and his people fear that if mining operations are carried on by the Linchwe Concession Company in the area at present marked out for that purpose, which is in somewhat close proximity to Mochudi and other villages, they (the Bakgatla) will have endless trouble with alien labourers who might be employed by the Company—trouble of the nature at present experienced by the Bakgatla residing at Signane (Derdepoort, where the Marico River enters the Protectorate from the Transvaal) whose village is visited by natives from the Batavia Goldfields, in the Transvaal, who make themselves a general nuisance (beer drinking, etc.) and, for that reason, the Chief and his people are willing to allow the Linchwe Concession Company to surrender the area demarcated in 1910, or a portion of it, for another one, of similar size, in the direction of the Bamangwato border where there are at present no villages of any importance. I would point out, however, that the new Agreement, as worded, does not specify this.

6. It is not without regret and concern that I view the decision of the Chief and his people. While I sympathize with them in their apprehension of trouble with foreign labourers it is clear from the British South Africa Company's letter of the 21st March last,‡ a copy of which is attached to the Secretary of State's despatch, that although some prospecting work has been done in the area at present marked off yet "up to the present no minerals of economic value have been discovered"—the apprehended danger therefore appears remote, but if a fresh mining area is demarcated without any safeguards as to locality, etc., a similar danger may threaten them from another area in close proximity to their principal villages, and if that new area be rich in minerals it may result in the loss to the Bakgatla of a large tract of country which could not be replaced in the distant future, and, furthermore, it would, in that event, inevitably result in the introduction of intoxicating liquors, on a large scale, into a Native Reserve—an evil which it has ever been the policy of His Majesty's Government to suppress in such Reserves.

7. For these reasons, and in the general interests of the natives, I am unable to recommend confirmation of this new Concession and would rather see all concessions in Native Reserves abolished if possible. I suggest that in this particular case the applicants be told that they were given, in all, fifteen years within which to select and mark out a mining area or areas in the Chief Linchwe's Reserve and that, having done so, it is regretted that the terms of the original Concession cannot now be varied nor a fresh concession sanctioned.

8. Should it be decided otherwise however, I earnestly hope that the object which the Chief and his people have in view in granting this new Concession will be borne in mind and that a safeguarding clause, as to locality, may yet be inserted in the Agreement as also a clause to give effect to the Chief's wish regarding the payment to him and his successors of percentages on net profits or gross income.

* Annex 7. † Annex 8. ‡ No. 24.

9. In conclusion, I desire to draw attention to the facts (*a*) that there is nothing in the new Agreement to show on what date it was signed by Isang, or, in other words, from what date the two years begin within which it allows prospecting, and (*b*) that the Chief informed the Resident Magistrate at Mochudi on the 29th April last, that the Concession should be dated the 1st April, 1924.

10. Since writing the foregoing I have received from Mr. Rosenberg the letter of which I enclose a copy* together with a copy of my reply thereto.

I have, &c.,
J. Ellenberger,
Resident Commissioner.

His Excellency,
The High Commissioner,
Cape Town.

Annex 1.

(Personal.)

Resident Commissioner's Office, Mafeking,
10th September, 1923.

Dear Mr. Rosenberg,

Referring to the conversation you had with me last Saturday (8th September) on the subject of prospecting for minerals, etc., in Linchwe's country, I have gone into the matter and the position appears to be as follows:—

The Mineral Concession granted by the Chief Linchwe on the 22nd July, 1898, gave Mr. Julius Weil, his heirs, etc., the sole and exclusive right for a period of five years from the 22nd July, 1898, to prospect for precious stones, gold, etc., and to mark off for mining operations one or more areas not to exceed in the aggregate 100 square miles, and was approved by the Secretary of State subject to the condition that the areas to be marked off for mining operations should not exceed four in number nor exceed in the aggregate 100 square miles: the right thereunder to prospect and mark off mining areas was, with the consent of the Chief and the approval of the Secretary of State, extended to the 21st July, 1908, and then for five years more, i.e., to the 21st July, 1913, and during the last-mentioned period of five years an area of 100 square miles was marked off for mining operations: if the right to prospect under the concession did not lapse *then*, it must be held to have lapsed in any case on the 21st July, 1913.

Any fresh agreement with the Chief of the Bakgatla, or any modification of the boundaries of the area already marked off, would therefore require the sanction of the Secretary of State for the Colonies (see section 45 of the Proclamation of 10th June, 1891†).

I return herewith Mr. Vickerman's two letters which you were kind enough to let me see and of which I have kept a copy.

Yours, &c.,
J. Ellenberger.

W. A. Rosenberg, Esquire,
Mafeking.

Mochudi, British Bechuanaland Protectorate,
8th September, 1923.

Dear Mr. Rosenberg,

Thanks for your letter of the 5th September. I hope something materializes and work is started.

There will be no trouble in Mr. Broderick starting work in any part of the Reserve. There is no objection on the Chief's part. I have had a talk with him and he sees that it is to the advantage of the Tribe (and himself) that some industry should be opened up in his country.

With kind regards,
Yours, &c.,
B. I. Vickerman.

W. A. Rosenberg, Esquire,
Mafeking.

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* Annex 9. † Enclosure 1 in No. 17 in African (South) No. 417.

DEAR MR. ROSENBERG, Mochudi, 7th August, 1923.

MR. HAROLD BRODERICK arrived here and I took him along to the Chief and introduced him and saw him fitted out.

He has the run of the whole Reserve and has not been tied down to the 100 square miles you have located. In fact I think you can regard it as unnecessary to confine your prospectors to the 100 square miles. The Chief will not place any difficulty in the way of your prospecting anywhere and if anything is found you will be given the option of transferring your area.

I have pointed out, very strongly, what a discovery of any minerals would mean to him and his people and he appreciates it and would welcome a strike.

With kind regards.

Yours, &c.,

B. I. VICKERMAN.

W. A. Rosenberg, Esq.,
Mafeking.

Annex 2.

MEMORANDUM.

Mafeking, 17th April, 1924.

MR. W. A. ROSENBERG came to see me this morning, in connexion with my letter of 10th September last, and produced an Agreement purporting to have been signed by Isang, Acting Chief of the Bakgatla, giving the Linchwe Concession Company the sole and exclusive right to prospect for minerals, etc., in the Bakgatla Reserve for a period of two years and, in the event of their finding anything, to mark out an area of 100 square miles for mining purposes, the Chief to receive £200 per annum instead of £100 under the existing Concession approved by the Secretary of State, and the Linchwe Concession Company to surrender the 100 square mile area marked off under the original Concession.

Mr. Rosenberg also produced a private letter, from Mr. Julius Weil, I believe, to the effect that the British South Africa Company had been requested to obtain the ratification by the Secretary of State of this new Agreement with Isang.

I informed Mr. Rosenberg, in reply, that the Secretary of State would most likely refer the matter to His Excellency the High Commissioner, if approached on the subject, and I suggested to Mr. Rosenberg that in order to save time he should send me officially a copy of the proposed new Agreement which I would instruct the Resident Magistrate at Gaberones to submit to the tribe in Kgotla at Machudi and inquire whether the tribe concurred in its terms, as I could not, in any case, give my support to such an Agreement unless assured that the tribe concurred in what the Acting Chief wished to grant. I pointed out that the document was signed only by the Acting Chief Isang and two witnesses, which, in my opinion, did not signify that the tribe as a whole concurred.

I also told Mr. Rosenberg that, personally, I was not very anxious to see that new Agreement go through, as it meant that, if anything very rich was found, a European township would probably spring up in the middle of a Native Reserve and the tribe lose ground which could not be replaced in the future.

Mr. Rosenberg said he would send me the Agreement so that, in accordance with my suggestion, it might be submitted to the tribe.

Mr. Rosenberg pointed out that under the original Concession, payments exceeding £2,000 had been made to the Chief, for which the Linchwe Concession Company had so far had no return, and thought this should be taken into consideration.

I called his attention to section 45 of the Proclamation of the 10th June, 1891, requiring that all concessions should have the sanction of the Secretary of State before they could be recognized by any Court of Law.

J. ELLENBERGER,
Resident Commissioner.

Annex 3.

Mafeking, Bechuanaland, Cape Province, South Africa,
17th April, 1924.

SIR,

Linchwe Concession.

I BEG to hand you herewith Agreement signed by the Acting Chief of the Bakgatla, Isang Pilane, which Agreement will practically form part of, or maybe be subsidiary to, the existing Linchwe Concession; I send you this Agreement acting under instructions from Major S. Weil of P.O. Box 5,499, Johannesburg, representing the London Board of Directors of the Linchwe Concession Company, Limited, with the request that you would kindly be good enough to allow the necessary formalities for the ratification of the Agreement in terms of section 45 of Proclamation of the 10th June, 1891, to proceed, and for which service I wish to thank you in anticipation.

In conclusion I would state that there is no date on the Agreement and perhaps the Chief and his Councillors would consent to such date being [ ]added[ ] when the Agreement reaches your office finally, or failing that on the date of acceptance by the Colonial Secretary.

I am, Sir, Yours, &c.,

W. A. ROSENBERG.

His Honour
J. Ellenberger, Esq.,
Resident Commissioner of the Bechuanaland Protectorate,
Mafeking.

Annex 4.

The Resident Magistrate,
Gaberones.

I ENCLOSE an Agreement (undated) purporting to have been signed by Acting Chief Isang Pilane granting to the Linchwe Concession Company, Limited, their heirs, etc., the sole and exclusive right for a period of two years (from what date?) to prospect for precious stones, gold, etc., throughout the Bakgatla Reserve and the right within that period to mark off one or more mining areas not exceeding in the aggregate 100 square miles on condition that, should such area or areas be marked off, the area already marked off shall be surrendered and revert to the Chief, and the annual amount payable to the Chief under the original Concession be increased from £100 to £200.

I desire that you will take an early opportunity to meet the Chief Isang and his tribe in Kgotla and deliver the following message from me:—

> "The document which I am sending to you through your Magistrate was delivered to me on the 17th April by Mr. W. A. Rosenberg, of Messrs. S. Kemp and Company, Limited, of Mafeking, who informed me that he was doing so under instructions from Major S. Weil, representing the London Board of Directors of the Linchwe Concession Company, Limited, with the request that I would take the necessary steps for the ratification, by the Secretary of State, of the Agreement purporting to have been signed by your Chief. Before transmitting that Agreement to His Excellency the High Commissioner for submission to the Right Honourable the Secretary of State, I desire to be informed whether the Chief Isang acknowledges his signature thereto, and, if so, whether the Bakgatla tribe concur in the terms of that Agreement, which Mr. Butler will read and cause to be interpreted to you.
>
> If the Chief acknowledges having signed that document, I would remind him that he should not enter into such agreements without first consulting his Magistrate or the Resident Commissioner, who have been appointed by the Government to safeguard your interests.
>
> I am awaiting your reply."

You should forward the Chief's and tribe's replies to me as soon as possible after the meeting in Kgotla, at the same time returning this Minute to me together with the document attached thereto.

You should also ask from what date the two years begin to run.

J. ELLENBERGER,
Resident Commissioner.

Mafeking,
17th April, 1924.

Annex 5.

I HAVE to report that, acting on His Honour's instructions, I proceeded to Mochudi on the 28th April, and attended a Kgotla meeting of the Bakgatla, previously convened by Chief Isang at my request, for the purpose of ascertaining whether the tribe concurred in the terms of the Agreement sent to me.

Before going to the Kgotla I had a conversation with the Chief, who acknowledged having signed the document and clearly demonstrated to me that the conclusion of the proposed contract would be entirely to the interest of the tribe. It appears that when Chief Linchwe entered into the original contract he agreed to cede an area including, and surrounding, Mochudi, i.e., commencing at Kgopa, the boundary runs in a straight line to Oliphant's Drift, thence to Sequanie, thence to Dikokong, and thence to Kgopa aforesaid.

The impression I gathered, both with the Chief and subsequently in the Kgotla, is that the tribe now realize that if the terms of the original Agreement are insisted upon great inconvenience will result to them. They fear that foreign labour will be introduced and that their people will be interfered with. If they could cancel the old Agreement they would not enter into a new one; they only propose to do so now as the lesser of two evils.

I enclose a copy of the Minutes taken at the meeting.

The Agreement should have been dated 1st April, 1924.

E. O. BUTLER,
Resident Magistrate.

Gaberones,
2nd May, 1924.
The Government Secretary,
Mafeking.

Annex 6.

The Resident Magistrate,
Gaberones.

WITH reference to your telegram No. 791 of the 21st May, advising Isang's visit to Resident Commissioner, I enclose for your information a copy of the Minutes of the interview which I granted to the Chief Isang yesterday.

Isang again came to see me this morning when he asked that I would give him a copy of these Minutes. They had already been typed however, and I told him that I would ask you to have a copy made for him. I would therefore be obliged if you would send him a copy thereof, together with the accompanying copy, which he asked for, of the message which in my Minute of the 2nd May, I asked you to deliver to the Chief and his people in respect of the Linchwe Concession.

With regard to the latter subject: if you will refer to a file which I believe is in your office you will observe that the original blue-print tracing showed an area, marked off under that Concession, of about 1,000 square miles instead of 100—this was the area from Kgopa to Oliphant's Drift, Siquanie, etc., referred to in your Minute of the 2nd May. This was pointed out to the Concessionaire who then furnished a second tracing showing correctly the area marked off, which is entirely on the west of the railway line. I have explained this to Isang: he said he had not a copy of this second tracing: it is clear, however, from the records in this office, that one was delivered to Linchwe by me on the 23rd January, 1911. Isang will send me the original blue-print tracing in his possession and I will return it to him after marking on it the correct area.

(The remainder of the Minute has reference to other matters discussed with Isang.)

J. ELLENBERGER,
Resident Commissioner.

Mafeking,
23rd May, 1924.

Annex 7.

NOTES OF INTERVIEW BETWEEN THE RESIDENT COMMISSIONER AND CHIEF ISANG PILANE OF MOCHUDI, ON 22ND MAY, 1924, AT MAFEKING.

* * * * * * *

Question of Preferential Mineral Concessions and rights in the Bakgatla Reserve.

Isang asked for information as to what exactly was meant by the preferential mineral rights held by the Chartered Company in the Bechuanaland Protectorate, and regarding his Reserve in particular, and said that when he had spoken to the Resident Commissioner on the subject at Gaberones, in March last, he had understood His Honour to say that he was not sure as to who actually held the mineral rights in the Bakgatla Reserve, apart from the Linchwe Concession.

Resident Commissioner: I think that what I said at Gaberones was that His Majesty's Government, as the protecting Power, did not claim the mineral rights in the Bechuanaland Protectorate, but that the Chartered Company did so.

Chief Isang: By what right?

Resident Commissioner: By virtue of the Charter.

Chief Isang: Can I see the Charter?

Resident Commissioner: Quoted Sections 1, 2 and 3 of the Charter, and explained to the Chief that it had originally been intended to hand the administration of the whole of the Bechuanaland Protectorate to the British South Africa Company, but that the Jamieson Raid had occurred and caused His Majesty's Government to reconsider the matter, with the result that the Bechuanaland Protectorate was still under Imperial Administration. But the Chartered Company still maintained that, under the Charter, they had a preferential right to minerals against any newcomer, and the rights now actually held by the Company were those they had acquired by virtue of Concessions—e.g., that granted to them by the Chief Khama in 1893, or concessions acquired by purchase from the original concessionaires, approved by the Secretary of State. The Company, however, had no right to land except to that handed over to it by the Imperial Government (the Lobatsi, Gaberones and Tuli Blocks).

The Resident Commissioner went on to say: Another matter I want to speak to you about is the Linchwe Concession. I noticed from the Minutes of the Meeting which the Resident Magistrate recently held at Mochudi, at which he was directed to deliver to you and your people a message from me concerning the Linchwe Concession, that you appeared to be under the impression that the mining area selected by Mr. Weil extends from Kgope Hill or its neighbourhood, to Oliphant's Drift, thence to Sequanie, Wildebeeste Kop, Oodi, and back to Kgope; the original area mapped out for Mr. Weil followed those boundaries, but the then Resident Commissioner pointed out that it was about ten times more than the 100 square miles authorized by the Concession and the Secretary of State, and it was reduced to 100 square miles which have been marked out west of the railway line, as shown on this blue print (print shown to Chief). That is all the Linchwe's Concession have in your Reserve. I wish to make this clear to you as I desire to know whether this affects in any way the reply which you and your people gave to the Magistrate at Gaberones, viz., that you had no objection to Mr. Weil marking out a mining area in another part of your Reserve in exchange for the area already marked out.

Chief Isang: We might consider this, if not unacceptable to the Government, provided that the new area is marked out in the direction of Dinokana on our boundary with the Bamangwato, away from our villages as we do not want alien natives to come into our villages as they do at present at Sequanie and other places from the Batavia Goldfields. They drink beer, etc., and cause trouble even on Sundays. There are villages in the present area marked by Mr. Weil and we want to avoid what is happening on our border near Batavia.

Resident Commissioner: I hear and will inform His Excellency the High Commissioner. If I have a word of advice to give you, it is, do not grant any more concessions, as, if a rich find be made, you may have a township of the size of Johannesburg in your Reserve, and not much ground left for your people.

* * * * * * *

Annex 8.

WITH reference to my Minute of the 23rd May, on the subject of the Linchwe Concession Company, Limited, I enclose herewith Isang's copy of the Company's blue print, showing in black ink the 100 square miles marked as a mining area. Please return it to the Chief, with my greetings.

J. ELLENBERGER,
Resident Commissioner.

Mafeking,
30th May, 1924.
The Resident Magistrate,
Gaberones.

Annex 9.

S. Kemp and Co., Ltd.,
General Merchants.
Mafeking, Bechuanaland, Cape Province, South Africa.

DEAR MR. ELLENBERGER, 30th May, 1924.

I HAVE been requested by Major S. Weil, representing the Linchwe Concession Company out here, to ask you when he may expect to receive the report that you promised of the meeting of the Magistrate at Gaberones with the Acting Chief, Isang Pilane, of Mochudi, and also he further requests me to make mention to you that it is the desire of the Linchwe Concession Company to arrange an active programme with regard to development.

Yours, &c.,
W. A. ROSENBERG.

His Honour,
The Resident Commissioner,
J. Ellenberger, Esq., I.S.O.,
Headquarters House, Mafeking.

Resident Commissioner's Office, Mafeking,
2nd June, 1924.

DEAR MR. ROSENBERG,

IN reply to your letter of the 30th May, regarding the Linchwe Concession Company, Limited, I should be glad if you would inform Major S. Weil that the report furnished by the Resident Magistrate at Gaberones, after his meeting with the Chief Isang and people at Mochudi on the 28th April last, can be summed up in a few words, viz., that the Bakgatla realize that owing to the area marked out being in close proximity to Mochudi Village they will be interfered with by alien natives introduced by the Company; that if they could cancel the Concession of 1898 they would not grant another one, and that they only propose to enter into a new Agreement now as the lesser of two evils, i.e., in the hope that any new area marked out would be at a safe distance, for instance, on the Bamangwato border.

Please add that Isang states that the date of the proposed new Agreement should be the 1st April, 1924, and that I have submitted the whole matter to His Excellency the High Commissioner.

Yours, &c.,
J. ELLENBERGER.

W. A. Rosenberg, Esquire,
Mafeking.

Enclosure 2 in No. 38.

(H.C. 222.)

Resident Commissioner's Office, Mafeking.
4th June, 1924.

MY LORD,

WITH reference to my despatch No. 220 of the 2nd June, regarding the Linchwe Concession Company, Limited, I have the honour to transmit herewith for

Your Excellency's information a copy of a further letter which I have received from Mr. W. A. Rosenberg.

I have, &c.,
J. ELLENBERGER,
Resident Commissioner.

His Excellency,
The High Commissioner,
Cape Town.

S. Kemp and Company, Limited,
General Merchants.
Mafeking, Bechuanaland, Cape Province, South Africa,

DEAR MR. ELLENBERGER, 3rd June, 1924.

I WISH to thank you very much indeed for your letter of the 2nd instant, on the subject of the Linchwe Concession, and also for your having kindly given the matter your consideration. I am communicating the contents to Major S. Weil at Johannesburg.

Yours, &c.,
W. A. ROSENBERG.

His Honour
The Resident Commissioner,
J. Ellenberger, Esquire, I.S.O.,
Imperial Reserve,
Mafeking.

Enclosure 3 in No. 38.

(No. 1219.)

SIR, High Commissioner's Office, Cape Town, 6th June, 1924.

I HAVE the honour to acknowledge the receipt of your despatches No. 220 and No. 222 of the 2nd and 4th June reporting upon the negotiations which, for some months past, have been proceeding between the local representative of the Linchwe Concessions Company and the Acting Chief of the Bakgatla in connexion with the proposal to grant the Company a new Mineral Concession in exchange for its existing mineral rights in the Reserve.

2. I am in full accord with your advice to Acting Chief Isang that he should refrain from granting any further concessions in his territory, but I should be obliged if you would report to me regularly upon questions of this nature in order that I may in turn keep the Secretary of State informed of all important developments as they occur.

I have, &c.,
ATHLONE,
High Commissioner.

His Honour
The Resident Commissioner
of the Bechuanaland Protectorate.

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No. 39.

THE HIGH COMMISSIONER to THE SECRETARY OF STATE.

(Received 8th July, 1924.)

[*Answered by No.* 40.]

(Confidential.)

SIR, High Commissioner's Office, Cape Town, 20th June, 1924.

WITH reference to paragraph 2 of your despatch No. 139 of 26th April,* I have the honour to inform you that pressure of work prior to his departure for

* No. 28.

Northern Rhodesia prevented Mr. Stanley from undertaking the preparation of the memorandum referred to in Prince Arthur of Connaught's despatch of 16th November, 1923.*

Recent attempts on the part of the British South Africa Company and other concessionnaires to secure approval of schemes for the development of their mineral and land rights in the Bechuanaland Protectorate convinced me that it was necessary for the protection of the natives to formulate at once a definite policy designed either to terminate, or to limit the duration, of all outstanding concessions in the Territory. I accordingly instructed Captain Clifford to undertake the preparation of a memorandum setting out the circumstances under which these concessions were originally granted, the terms upon which they were subsequently expanded, curtailed or determined, and the extent to which they are at present recognized by the Colonial Office. This memorandum has now been completed, and I have the honour to forward copies herewith for your information.

In response to a request for his observations on the memorandum the Resident Commissioner of the Protectorate stated that he could not improve upon the recommendations put forward in it or add to the summary of past policy set out in its opening pages. With reference to the contention that the Crown lands of any Territory should be vested in its Government (page 5 of the memorandum) Mr. Ellenberger points out that this theory is contemplated in the Orders in Council of 16th May, 1904, and 10th January, 1910.† Some interesting information on the disposal by Khama and Segkoma of the monies received from the British South Africa Company, supplied by Mr. Ellenberger, has been incorporated on page 20 of the memorandum.

The question of dealing with the mineral rights of European companies within the Native Reserves is one that has engaged my attention since my arrival in this country, and I am convinced, even at the risk of laying myself open to the charge of retarding the development of the Protectorate, that the only satisfactory solution of the problem is to adopt a policy designed to limit the period of duration of all concessions with a view to their termination at the earliest possible moment. The suggestions set out in the summary of this memorandum appear to traverse all the recommendations I have to offer, and I accordingly submit them for your favourable consideration.

I have, &c.,
ATHLONE,
High Commissioner.

Enclosure in No. 39.

His Excellency,

Memorandum on British South Africa Company's Protectorate Rights.

The British South Africa Company's preferential and mineral rights in the Bechuanaland Protectorate appear to have their genesis in Lord Knutsford's "Charter" despatch of 14th November, 1889,‡ and Lord Ripon's "Railway" despatch of 20th December, 1892.§ The latter contains the basis of an agreement between the Government and the Company, and the provisions relevant to this memorandum appear in sub-sections IV, V and VI of section 9 and may be briefly summarized as follows:—

> "The Government agreed to use its influence with the Chiefs to induce them to grant to the Company various concessions of minerals and agricultural or Urban Lands subject to (*a*) reasonable compensation being paid and (*b*) the absence of other recognized claims being proved."

The acquisition of these concessions is sanctioned on the understanding that "the Company use due diligence in inspecting and prospecting them . . . and in opening up the mineral areas for working."

Sections V and VI provide for the investigation and settlement of all concessions made prior to the granting of the Charter and for the annulment of those secured subsequently.

The Marquess of Ripon's despatch of 15th January, 1895,‖ gives a list of the Bechuanaland Protectorate concessions which were terminated, bought out or recognized by the Colonial Office.

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* No. 21. † Not reprinted. ‡ No. 103 in African (South) No. 372. § See pp. 26-30 of C.7154 and No. 42 in African No. 441. ‖ No. 5 in African (South) No. 537.

On the 25th July, 1893, the Company secured from Chief Khama an agreement authorizing it to prospect for minerals throughout his territories on the understanding that no prospecting operations should be allowed "in any road nor within 200 yards of any village, kraal, house or hut nor within 30 miles of the town of Palapye, nor upon any land under cultivation or required for the purpose of irrigation, without the written consent of the Chief."

For this concession the Company agreed "on the discovery, in payable quantities of any gold, precious stones, minerals or metals" to pay Khama £25 monthly.

This agreement was approved by the Marquess of Ripon in Colonial Office despatch of 23rd November, 1893,* subject to the following injunction to the High Commissioner:—

> "You will bear in mind that the British South Africa Company, in conducting mining operations under the present concession, will be within the sphere of your direct administration and that their mining regulations can only be applied subject to the provisions of any general legislative proclamation affecting mining which you may issue."

Meanwhile Rhodes, in accordance with the agreement outlined in Lord Ripon's despatch of the 20th December, 1892,† had been pushing the railway northwards from Kimberley. In 1894 the line reached Mafeking, and on the eve of its projection into the Bechuanaland Protectorate he considered the time had arrived to come to an understanding with the Colonial Office as to the future administration of that territory. In a letter dated 28th November, 1894, he reminded Lord Ripon that the policy of the Colonial Office had contemplated the assumption by the Company of the control and administration of the Protectorate, and he intimated that he was willing to undertake that responsibility forthwith and without assistance or subsidy from Her Majesty's Government. In reply (30th November, 1894‡) Lord Ripon accepted Rhodes' interpretation of Imperial policy and signified his readiness, "when the proper time arrived," to entertain reasonable proposals for the acquisition by the Company of the administration of the Protectorate.

When Mr. Chamberlain became Colonial Secretary he entered into negotiations with the Chiefs (who were in England for that purpose) which terminated in a land settlement securing to them specified reserves for their people, and to the Company certain strips or "blocks" of land along the Transvaal border.

In Linchwe's case it was agreed that a strip of his land each side of the Railway should be vested in the Company and that his territory should come under its rule.

The Chiefs, it was understood, agreed to abandon whatever rights, other than hunting rights, they may have formerly had outside the reserves.

The Batawana Reserve was surveyed at a later date.

By High Commissioner's Proclamation of 18th October, 1895,§ the administration of Bamaliti and Baralong country was transferred from the Protectorate administration to that of the Company, and it was subsequently notified that Dr. Jamieson and Major White had been appointed Resident Commissioner and Magistrate respectively for these territories. The Bechuanaland Border Police (B.B.P.) were accordingly disbanded, many of them accepting the Company's offer of transfer to its service. Under the pretext of protecting Railway operations a considerable force of the Company's Police, reinforced by recent additions from the late B.B. Police, concentrated in the newly acquired territories and so it transpired that preparations for the forthcoming Jamieson raid were proceeding *pari passu* with the negotiations between the Company and the Colonial Office for the assumption by the former of the administration of those portions of the Protectorate not set aside as native reserves. The terms of these negotiations are set out in letters from the Company dated 20th, 22nd and 26th November,‖ and in a reply by Mr. Chamberlain dated 10th December,¶ of which paragraph 12 has a vital bearing upon the issue which is being considered in this memorandum. Referring to the Company's claim to territories outside the reserves set aside for the "three Chiefs" the following ruling is given:—

> "As regards those parts which are in the beneficial occupation of natives such as the lands of other Maroquin Barolong (south of Bathoen) and the lands actually used by Sekhome and his tribe (near Lake Ngami) Mr. Chamberlain can only repeat the observation already made, that the Crown cannot grant what it does not claim for itself. *There are, Mr. Chamberlain believes, undoubtedly other lands in the*

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* No. 74 in African (South) No. 459. † See pp. 26-30 of C.7154 and No. 42 in African No. 441. ‡ Nos. 52 and 55 in African (South) No. 484. § Not reprinted. ‖ Nos. 153, 157 and 160 in African (South) No. 498. ¶ No. 182 in African (South) No. 498.

Protectorate to which no just native claim exists, and these he considers that the Company may take possession of and by virtue of their occupancy make title to."

This passage is of the greatest importance because around it centred the subsequent dispute which arose over the Company's claim to an "owner's share" of any profits on mining operations which might be subsequently conducted in these regions. The Colonial Office has, however, refused to admit this claim on the grounds that it is customary for the Crown lands of a Territory to be vested in its Government, and that any right to them which the Company might have justifiably preferred by virtue of Mr. Chamberlain's undertaking lapsed as soon as the proposal to transfer the administration to the Company was abandoned.

In paragraph 13 Mr. Chamberlain states that he is satisfied that Sekhome's country should come under the Company's rule in the event of the transfer being effected.

All these negotiations were, however, abruptly terminated by the Jamieson Raid, and on the 18th January, 1896,* the Company was informed that the question of the future of the Protectorate must be indefinitely postponed.

In letters dated 7th February and 14th March† Mr. Chamberlain informed the Company that the administration of its "concession" territories, except in development questions, would be entrusted to the Protectorate Government, though he intended that the High Commissioner would be prepared to consider, with a view to their incorporation in Protectorate legislation, any representations on the subject of land tenure or mining rights which the Company might wish to make. In accordance with this decision High Commissioner's Proclamation of 18th October, 1895,‡ vesting the administration of Bamaliti and Baralong in the Company was repealed.

On 14th December, 1897,§ Lord Milner raised with the Colonial Office the whole question of the Company's land and mineral rights in the Protectorate, and impressed upon the Secretary of State the importance of coming to some definite understanding on the matter.

Lord Milner's despatch and all previous relevant papers were accordingly submitted to the Law Officers of the Crown, who came to the following conclusions‖:—

1. That the British Government did, in express terms, bind itself to assist the Company in its efforts to secure concessions of minerals, agricultural lands and town sites in the Protectorate and that in consequence of this pledge the Company had a preferential, but not exclusive, right to all concessions granted subsequent to the Charter.

2. That these preferential rights still exist except in so far as they have been modified by the fact that as the Protectorate Government had since relieved the Company of the expense and responsibility of administration it was entitled to reserve land for Government purposes and to impose levies upon the Company's profits on the exploitation of its concessions as a contribution towards cost of the Administration.

3. That although there was no express agreement on the point it was intended that the "Company should have the same rights in lands over which there exist no such rights in Native Chiefs as would enable them (the Chiefs) to grant concessions, and this both (*a*) where no such rights ever existed, and (*b*) where such rights were abandoned by the Chiefs to the Secretary of State on 6th November, 1895."

It would appear, therefore, if this opinion is of force, that the Government may not grant concessions in any part of the Protectorate to any person or firm until and unless the British South Africa Company has been offered the first refusal of them. But on the other hand it seems that there is nothing to prevent the Government from declining to grant *any* concessions on Crown lands if it can show that they are needed for additional native reserves or other administrative purposes, and presumably the Government is also at liberty to develop them for the benefit of the Protectorate on its own initiative.

This legal opinion was subsequently communicated to the Company whose Directors contended that its rights could not be regarded as merely preferential as it was expressly stated in Lord Ripon's 1892 despatch¶ that "the High Commissioner will not recognize as valid any concessions subsequent to the date of the Charter."

* No. 225 in African (South) No. 406. † Nos. 19 and 67 in African (South) No. 517. ‡ Not reprinted. § No. 2 in African (South) No. 539. ‖ No. 173 in Vol. V of Law Officers' Opinions. ¶ See pp. 26-30 of C.7154.

They further contended that the right of Her Majesty's Government to take land for its own purposes was expressly limited to land needed in Urban areas for administrative purposes—(paragraph 3, subsection IV of Clause 9, 20/12/92). The Directors argued further that the Company's ownership rights were not impaired by the action of its Officers in the Jamieson Raid nor by the lapse of the agreement to transfer the administration to the Company.

The Colonial Office in reply said that it was advised that Section VI of paragraph 9 of the 1892 despatch declaring that the High Commissioner would not recognize concessions subsequent to the Charter was merely intended to be an instruction to the Commission charged with the investigation of concessions already granted and had no bearing on those which might subsequently be conceded to the British South Africa Company or, on its refusal, to any other firm.

Mr. Chamberlain further stated that "if the lands in the Protectorate outside the native reserves should be handed over to the Company for the purposes of development, the Company will be in a more favourable position than that contemplated in Lord Ripon's despatch under which they would have been dependent on the willingness of the native chiefs to grant them concessions, for Lord Ripon only undertook that the Government Officials would use their best endeavours to induce the chiefs to grant such concessions and looking to the attitude of the principal chiefs towards the Company it does not seem that these endeavours would have been entirely successful."

The position taken up by the Colonial Office was, in short, as follows:—The Crown lands were brought into existence as a result of the negotiations with the Chiefs in November, 1895, and it was intended that they should be handed over to the administration which, but for the Jamieson Raid, would have been the Company. By the action of its officials on this occasion the Company was relieved of the expense and responsibility of administration and, as a matter of course, the Crown lands, which were intended as its compensation, were automatically forfeit to the Protectorate Government. To this decision, in spite of all subsequent protests, the Colonial Office has consistently adhered.

As a result of subsequent negotiations with Mr. Rhodes the Colonial Office agreed to hand over to the Company for development the country now known as the Lobatsi, Gaberones and Tuli "blocks," abandoned by the Chiefs in 1895. It simultaneously acquired the Kanye and Riesle Concessions from their former owners.

The position to date is summed up by Mr. Chamberlain in a despatch dated 6th June, 1901,* in which the Company's title is confirmed in these blocks and in its mineral rights subject to power of Colonial Office to:—

1. Take land for Government purposes.
2. Withhold assent to unusual forms of development contrary to public interest.
3. Impose taxation.
4. Protect mineral rights already recognized.
5. Maintain mineral rights that have been reserved.

Further, in a letter to the Directors dated 24th November, 1913,† the Secretary of State referring to the Company's position in Bechuanaland made the following stipulation:—

"I need hardly add that the preferential rights of the British South Africa Company must be held to be good only against other white applicants for land, and not against the natives of the Protectorate."

Subject to any adverse decision at Law it may now be assumed that the Company's rights in the Protectorate have been determined. It remains to consider (*a*) the future policy of the Colonial Office in regard to the Territory, (*b*) the extent to which existing concession rights are likely to obstruct that policy, and (*c*) any methods that can be adopted to dispose of concessions which appear inconvenient.

It has been recognized that in most portions of our Tropical African possessions the only possible justification for our presence lies in our ability to improve conditions in these countries and make their peoples more prosperous, more peaceful, more healthy and more happy than they would have been had they been left to their own resources. But South Africa is climatically a "white man's country" and therefore a place in which European colonization is bound to progress. In Australia and North America although the aboriginal peoples continue to survive

* No. 214 in African (South) No. 650. † The reference should be to the Secretary of State's despatch to the High Commissioner of the 24th November, 1913 (No. 36 in African No. 1003).

white settlement in fair numbers, their ultimate extinction or absorption can only be a question of time. But though some of our weaker peoples may die out during the next few decades, the sturdy folk of the Bantu stock are certain to increase. Moreover, now that tribal warfare, epidemic disease and Nature's other crude but efficient methods of preventing the too rapid propagation of primitive peoples, have all been arrested in their operation by the reign of law and order the white man has set up, it is inevitable that the black population of South Africa will multiply in the future to an extent for which the past presents no precedent. But the territory available for them to expand into has been reduced to a few inadequate reserves which contain a large percentage of barren soil and which in the Union are not very effectively guaranteed against white encroachment. The Imperial Government has for years used its influence, and expended its resources in securing to these people a residue of their former possessions but, of the three territories it has set aside for them adjacent to the Union, Basutoland is already overcrowded and there is no land in Swaziland that could be made available for native settlement. Lastly there remains Bechuanaland which, although of considerable extent, contains a large proportion of "waste" land owing to the absence of water.

It is obvious, therefore, that the time has come to arrest any further detrition of native tenures in Bechuanaland and, as far as possible, to liberate them and the Crown lands from concessions which may ultimately result in further disintegration of the Protectorate.

Influenced apparently by these considerations and possibly by a desire to ensure that past efforts on behalf of the natives shall not have been made in vain the Colonial Office has of late years adopted a policy designed to achieve the objects set out in the preceding paragraph.

In accordance with this policy the Company's claims have been reduced to a minimum consistent with obligations contracted in the past, and although it may be thought that in view of the Company's services to the territory a close bargain has been driven with the Directors it has to be admitted that Imperial policy has been dictated solely by solicitude for the welfare of the natives and has been carried out at no small pecuniary sacrifice. It has to be remembered too that the Company is equally pledged to this ideal by the Royal Charter which lays down that its operations are to be undertaken in order that "the conditions of the natives inhabiting the said territories will be materially improved and their civilization advanced."

That the Colonial Office has decided to pursue systematically this policy of liberating the native reserves from these mineral contracts is clearly shown by two recent examples.

In a despatch No. 139 of 26th April, 1924,* the Secretary of State refused the Company's application for an extension of the Moremi Mineral Concession which it held over the Batawana Reserve.

As late as October, 1923, Chief Isang entered into an agreement with the Linchwe Concession Company, Limited, granting certain mineral rights in his territory, but the validity of this contract was questioned by the Colonial Office on the grounds that Isang is only an Acting Chief and that there is nothing in the agreement to show the consent of the tribal Council had been previously obtained. But apart from any doubt that may exist on this point the Secretary of State has informed the Company that he "can hold out little prospect of being able to confirm the Concession." (Secretary of State's despatch 140 of 26th April, 1924.†)

The following appear to be the only outstanding mineral concessions still operating in native reserves:—

1. *The Gaseitsiwe Concession—Bangwaketse. 29th March*, 1888. *Balkis Company.*

The Grantee has the right (*a*) to "prospect" for minerals and precious stones throughout the territory in return for a payment of 5s. monthly in advance and (*b*) to "search for and win" minerals and precious stones in an area not exceeding 400 square miles of any mining area selected. No definite period is fixed for the duration of the Concession, but it is provided that it shall last so long only as the said sums of money shall be punctually paid, i.e., within three months of due date, or if the grantee gives to the Chief, his heirs, successors or assigns, six months' notice in writing of his intention to terminate same.

* No. 28. † No. 30.

2. *Kanya Exploration Concession—Bangwaketse. 13th October*, 1887. *Balkis Company.*

This Concession is in same terms as No. 1 above with following exceptions: (*a*) the rental of £1 per square mile is payable quarterly instead of annually, and (*b*) whereas in No. 1 the Concession is in favour of a single grantee without any reference to his successors, etc., this Concession is vested in three grantees and "their heirs, executors, administrators and assigns." The stipulations as to the termination and duration of these contracts are in each instance identical. There is no provision as to notice of termination by the grantor.

(*Note.*—It appears that at the present time the Balkis Company is paying to the Chiefs a consolidated rental of £120 per annum for both Concessions—see High Commissioner's despatch to the Secretary of State, Confidential, 4th April, 1924.*)

3. *"Khama" Concession—Bamangwato. 25th July*, 1893. *British South Africa Company.*

The Concession accords the British South Africa Company the "sole and exclusive" right to prospect for minerals throughout the Bamangwato Reserve provided no prospecting operations are undertaken within 30 miles of the town of Palapye nor within 200 yards of any village, kraal, house, hut, nor in any road or upon ground under cultivation or required for irrigation. A rental of £25 per month is due to the Chief but not until "the discovery in payable quantities of any gold, precious stones, minerals or metals." This contract can only be cancelled by the Chief if, after due notice has been given, the grantee refuses to pay any monies due. There is no reference to any right on the part of the grantee to cancel the agreement.

4. *Secheleland Concession—Bakwena. 28th August*, 1889. *British South Africa Company (acquired).*

This Concession which also includes the Gaberones Block was modified by the Secretary of State in 1895 and subsequently acquired by the British South Africa Company. Under a Deed of Agreement dated 6th August, 1903, the Company pays the Chief £180 per annum for the right to prospect for and win precious stones and minerals throughout the territory and to mark off an area for mining operations not exceeding 10 miles square. The lease is for a period of five years from a date to be fixed. (p. 371 [372] White Book 702.)

It will be seen that Concession No. 4 can be limited within five years from a prescribed date to a prescribed area and although it is, for that reason, of less consequence, its existence is in conflict with the policy of freeing the reserves from Mining Concessions. In regard to Nos. 1, 2 and 3, however, no definite period of duration has been stipulated and the problem of securing their abolition or arranging for their termination at a future date has been under consideration for some time.

Mr. Justice Feetham, formerly Legal Adviser to the High Commissioner, when requested to report upon the validity of Concession No. 1 held by the Balkis Company expressed the opinion† that it could not be inferred from the absence of any mention of assigns in the document that the duration of the Concession is limited to the life of the original concessionnaire since the right conferred is an assignable right. He further points out that this particular Concession had already been transferred to assigns at the date when the Concession Commission reported on it.

"It has been held," Judge Feetham remarks, "that a lease may validly be made to last for as long as the lessee pleases, and there seems no reason why this should not also be *permissible* in the case of mining leases. The Concessions must therefore, I think, be regarded as still in force provided the sums due thereunder have been punctually paid and no notice of termination has been given by the grantees or their assigns."

With reference to the British South Africa Company's mineral rights in Khama's country Mr. Justice Feetham considers that the agreement does not constitute a "lease" in the strict sense of the term since under Roman Dutch law a lessee is given no right to destroy or appropriate the substance of the thing hired. But while admitting that an agreement of this type would usually be classified as a

* No. 27. † Pages 16 and 21 in this volume.

"mining lease," he thinks that in this particular case it should really be regarded as a contract *sui generis* and quotes *Neebe v. Registrar of Mining Rights*, 1902, T.S. 65, in support of this argument. He contends that for the purpose of ascertaining its duration where no definite period has been fixed it would be justifiable to have recourse to the rule applied to leases which (in agreements where no time limit is fixed and no provision is made for compensation) an owner is permitted to terminate a lease after giving notice equivalent to the period of time which would elapse between the dates upon which two successive rentals fell due—in this case one month. Owing to the special circumstances, however, he advises that Segkoma should, to be on the safe side, give the Company a year's notice if he desires to take formal steps to determine the lease.

Mr. Leslie Blackwell, the present Legal Adviser in this Office, in supporting the opinion expressed by Mr. Feetham, says* :—

> "The Concession in question in my opinion is a contract and not an alienation. If it were the latter it would of course exist in perpetuity like any other alienation, but it is not. It is not a lease but an innominate contract of a character analogous to that of a lease and like all contracts can be terminated on proper notice. As to what would constitute proper notice in this case I think the fact that payments were to be made monthly once they commenced would indicate that, strictly speaking, one month's notice would suffice."

In support of this argument he quotes the case of *L. and S.A. Exploration Co. v. Murphy*, in which Lawrence J. says :—

> "Apart from statutory provision it would presumably be competent to a claim-holder paying a monthly licence, as to any other monthly tenant, to give a month's notice in the proper quarter of his intention to terminate his holding, and until he did so, like every other tenant, he would be liable for the monthly licence money or other payment for the use and occupation of the ground in his possession."

I presume that Mr. Blackwell has in mind the idea that if the right to give notice of intention to terminate a lease can be proved to belong to one party to a contract (not regulated by statutory provision) the other party should be regarded as having equal rights in that respect.

The contention that the Khama Concession is not a "mining lease" but an ordinary contract is strengthened by the fact that as there is no mining law to govern the grant of "mining leases" in the Protectorate the absence of "Statutory provision" required to make Justice Lawrence's judgment applicable to this case has been demonstrated.

If the opinions of Judge Feetham and Mr. Blackwell could be upheld in Court the question of dealing with all the Concessions would be a simple one because it seems to me that if the Khama Agreement can be cancelled by a month's notice the Gaseitsiwe and Kanya Concessions would also be subject to either a year or a quarter's notice respectively. If, on the other hand, it is considered inadvisable to test these arguments in Court, or in the event of their not being upheld, it will be necessary to have recourse to negotiations with the Companies if the Concessions are to be surrendered or their duration limited to a fixed period of time.

In addition to the four Mineral Concessions described above there are the British South Africa Company's preferential rights outside the native reserves, and the next step in pursuance of the Colonial Office policy is to secure the surrender or limit the period of duration of these rights either as opportunity offers or according to the extent to which they appear detrimental to native interests.

Foremost amongst them is undoubtedly the Khama Concession which has been held by the Company since 1893, and for which the Bamangwato Chiefs received no recompense until a few years before the war when copper was obtained in payable quantities from the Bushman Mine and the Company commenced to allow Khama the £25 per month stipulated in the Agreement.

With reference to the disposal of these contributions Mr. Ellenberger reports as follows :—

> "The old Chief banked it, evidently with a view to repaying it to the Company if ever he saw a chance of doing so, but an evil day came, when to help two storekeepers who had been in business with him he appears to have authorized the Bank to use his fixed deposits to liquidate a big overdraft of the firm. I daresay Segkoma is receiving the same, or rather "a similar"

* See page 48.

> amount a month, but whether he is banking it or not I am not in a position to say."

But even in the event of precious stones or minerals being discovered the share falling to the Bamangwato will still remain the absurdly inadequate sum of £25 per month even though the Company might be removing from their lands millions of pounds' worth of diamonds, gold, coal or other minerals. The inequity of this arrangement is apparent and it is not surprising that Segkoma is anxious to release his country from a contract unprofitable to himself and disturbing to his people.

In estimating, for liquidation purposes, the value of this Concession the Company might be reminded, as Sir James Macgregor has observed, that it is within the power of Segkoma to render it practically worthless, since under the Agreement prospecting is prohibited within 200 yards of any kraal, hut, road, cultivation, etc., and it would be a simple matter for a hostile Chief to obstruct mining operations by building huts or making roads close by. It might not, therefore (in view of Segkoma's attitude and the legal uncertainties surrounding the Agreement), be difficult to induce the Company to relinquish its claims for a similar concession over portion of the Crown lands. This would constitute a very decided improvement on the present arrangement, particularly if a time limit were inserted in the new lease.

An even better alternative, in view of the considerations set out on page 12 of this Memorandum and presuming no special objections existed, would be to compensate the Company by offering concessions in some of our equatorial dependencies such as Northern Rhodesia or the Tanganyika Territory.

If it is found impossible to arrive at a territorial adjustment on these lines there remains the only alternative of coming to a financial settlement. It is unlikely that His Majesty's Government would be willing to buy out the Company's interests, and although the Bechuanaland Protectorate might be able to finance a loan provided it did not exceed £50,000, this remedy appears to me to be, if anything, more objectionable than the existing liability because it would impoverish the Administration for many years to come and render the future prospects of the Protectorate even more precarious than they appear to be to-day.

The foregoing remarks apply with equal force but with less urgency to the other Mineral Concessions in native reserves.

Preferential Rights over Crown Lands.

As the Secretary of State has ruled that the preferential rights of the Company in respect of the Crown lands cannot hold good as against the Protectorate natives there does not appear to be any special reason for getting rid of the Company's preferential rights over the Crown lands so long as His Majesty's Government reserves the power to prohibit any form of development or exploitation, such as cattle ranching, which would prejudice in any way the interests or prosperity of the Bechuanas or impair the future value of the lands. Moreover, the only form of compensation available would appear to be a grant to the Company of a specified area of Crown land in exchange for its preferential rights.

It may occasionally appear expedient in order to render some vital service to the natives to grant *long leases* over outlying pieces of Crown land or even to alienate small portions if no other alternative is possible, and Your Excellency held the view that such a case arose in connexion with the erection of Cold Storage Works in the south-east corner of the Protectorate. But as the Secretary of State's telegram of 22nd [21st] May,* rejecting these proposals, indicates that the Colonial Office has decided that there shall in future be no further alienation of Crown lands, except in favour of natives of the Territory, this solution is out of the question.

SUMMARY.

A. Mineral Rights in Native Reserves.

If it is resolved that the cancellation of mining concessions is imperative and should be undertaken as a matter of policy the following suggestions may be worth considering :—

1. That the prospects of terminating the concessions by legal action be investigated.

2. That if this method offers small prospect of success, negotiations be undertaken with a view to inducing the Companies to abandon their mineral

* 16143/24 ; not printed.

concessions in native territories in return for compensation elsewhere or in cash.

3. That compensation might take form of—

(*a*) Similar prospecting rights for a prescribed period of time over Crown lands with right to select three or four mining areas of specified size to be held as mining leases for a period of years.

(*b*) A territorial or mineral concession in British equatorial possessions not adjacent to the Union.

4. That if it is found impracticable to obtain the surrender of mineral rights in the reserves new leases be substituted restricting the operation of a concession to a limited portion or portions of a reserve and to a prescribed number of years.

In the event of a wealthy mine being discovered native property in the vicinity would inevitably suffer, but there might be reserved to the Protectorate Government a large share of the profits earned just as the Union Government has in the case of the Premier Diamond and Government Area Mines. The money so obtained could be set aside for the purchase elsewhere of lands for natives in exchange for any they may have lost in the vicinity of a mine.

B. Preferential Rights over Crown Lands.

1. That these rights be disposed of if their cancellation can be effected economically.

2. Failing 1 that—

(*a*) No developments prejudicial to native industry or trade be permitted.

(*b*) That the lands be not exploited in a manner calculated permanently to reduce their future value.

32361

No. 40.

THE SECRETARY OF STATE to THE HIGH COMMISSIONER.

(Confidential.)

MY LORD, Downing Street, 17th July, 1924.

I HAVE the honour to acknowledge the receipt of your Confidential despatch of the 20th of June* regarding the British South Africa Company's concessions and rights in the Bechuanaland Protectorate, and to request you to convey my thanks to Captain Clifford for preparing the interesting and useful memorandum on the subject enclosed in your despatch.

2. Before considering what further action can be taken I propose to await the letter respecting the Khama Concession promised by the British South Africa Company in their communication of the 5th of June,† a copy of which was enclosed in my despatch No. 176 of the 20th of June.‡

I have, &c.,
J. H. THOMAS.

43808

No. 41.

THE HIGH COMMISSIONER to THE SECRETARY OF STATE.

(Received 15th September, 1924.)

(No. 626.)

SIR, High Commissioner's Office, Cape Town, 28th August, 1924.

WITH reference to your despatch No. 139 of the 26th April§ regarding the decision not to confirm the extension of the Moremi Mineral Concession to the 29th August, 1929, I have the honour to transmit herewith a copy of a despatch which I have received from the Resident Commissioner of the Bechuanaland Protectorate.

I have, &c.,
ATHLONE,
High Commissioner.

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* No. 99. † No. 35. ‡ 26380/24: not printed. (Forwarded copies of Nos. 33 and 37.) § No. 28.

39

Enclosure in No. 41.

(H.C. 299.)

Resident Commissioner's Office, Mafeking.

MY LORD, 16th August, 1924.

I HAVE the honour to acknowledge the receipt of Your Excellency's despatch No. 1112 of the 5th July,* and to inform you that I have directed the Resident Magistrate of Ngamiland to tell the Chief Mathiba that the Secretary of State is unable to confirm the extension of the Moremi Concession which was applied for by the British South Africa Company, and that he (Mathiba) should take my advice and not grant any more mineral concessions.

I have, &c.,
J. ELLENBERGER,
Resident Commissioner.

48368

No. 42.

THE HIGH COMMISSIONER to THE SECRETARY OF STATE.

(Received 14th October, 1924.)

(Confidential.)

SIR, High Commissioner's Office, Cape Town, 25th September, 1924.

WITH reference to my despatch Confidential (2) of the 25th April last† regarding the competency of Chief Seboko to grant any mineral concession over the Bamalete Reserve, I have the honour to transmit herewith a copy of a despatch from the Resident Commissioner of the Bechuanaland Protectorate forwarding a copy of a further letter from the Local Secretary of the British South Africa Company, Cape Town.

2. I also append a copy of my reply.

I have, &c.,
ATHLONE,
High Commissioner.

Enclosure 1 in No. 42.

(Confidential.)

Resident Commissioner's Office, Mafeking.

MY LORD, 20th September, 1924.

I HAVE the honour to refer to Your Excellency's Confidential despatch No. 816 of the 25th April,‡ on the subject of the grant of mineral concessions in the Bamalete Reserve, and to submit herewith for your consideration a copy of a further letter from the Local Secretary of the British South Africa Company, Cape Town.

2. I should be glad of Your Excellency's instructions as to the reply to be returned to Mr. Philip.

I have, &c.,
J. ELLENBERGER,
Resident Commissioner.

SIR, Cape Town, 17th September, 1924.

I HAVE the honour to refer you to my letter of the 13th February, 1923,§ and your replies of the 24th idem,‡ and 10th May, 1923,‡ on the subject of the subsidy paid by this Company to the Chief of the Bamalete, and would be glad to know whether you are now in a position to reply to the questions raised in my letter above quoted.

I have, &c.,
F. B. PHILIP,
Local Secretary.

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* Not printed. † No. 33. ‡ Not printed. § Sub-enclosure in Enclosure 1 in No. 14.

Enclosure 2 in No. 42.

(Confidential.)
(No. 1789.)

High Commissioner's Office, Cape Town.
25th September, 1924.

SIR,

I HAVE the honour to acknowledge the receipt of your Confidential despatch of the 20th September forwarding a copy of a further letter from the Local Secretary of the British South Africa Company in which he has drawn attention to his letter of the 13th February, 1923, relating to the subsidy which is paid by the Company to Seboko, Chief of the Bamalete, and to the question of the competency of that Chief to grant any mineral concession over the Bamalete Reserve.

2. I understand that it is in regard to the latter question that the Company is anxious to obtain a reply, and I suggest that you should inform the Local Secretary that a copy of his letter of the 13th February, 1923, was forwarded to the Colonial Office in May, 1923,* and that the Secretary of State was asked to give directions in regard thereto, but that no answer has yet been received. You might add that a copy of Mr. Philip's letter of the 17th instant is being forwarded to the Colonial Office.

I have, &c.,
ATHLONE,
High Commissioner.

3126

No. 43.

THE BRITISH SOUTH AFRICA COMPANY.

MEMORANDUM.

BECHUANALAND PROTECTORATE.

1. THE British South Africa Company submits this memorandum regarding its position in relation to the Bechuanaland Protectorate territories for the consideration of the Secretary of State.

Administration.

2. No question now arises, so far as the Company is concerned, in connexion with the Administration of the Protectorate.

Tuli, Gaberones and Lobatsi blocks.

3. With the exception of the necessity for a Mining Law, to which reference is made later on in this memorandum, no question arises with regard to the Tuli, Gaberones, and Lobatsi blocks, in which the Company holds the land and mineral rights.

The Company's Rights—General.

4. In the remainder of the Protectorate the Company possesses certain rights. These rights, albeit considerably narrower than those to which the Company has always considered itself entitled by reason of its pioneer work and of the pledges originally given to it, have been admitted by successive Secretaries of State.

The nature of these rights is set out in this memorandum. The Company has been allowed by the Crown very little opportunity to make use of them.

In the past the Crown has never received sympathetically any proposals made by the Company for turning its rights to account, and has never formulated a mining law under which, in the Company's view, having regard to its experience in Rhodesia, mineral development could, in practice, take place. The Crown's attitude has, it is understood, been adopted to some extent at any rate in deference to the personal wishes of the late Chief Khama.

Quite recently the Crown has indicated that it is in favour of a policy relating to the Native Reserves which would have the effect of rendering some of the Company's rights quite valueless.

It will be clear that such a condition of affairs is most unsatisfactory from the Company's point of view.

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* See No. 14.

General definition of the Company's Rights.

5. The Company's admitted rights in the Protectorate both within and outside the Native Reserves, are defined in a letter from the Colonial Office to the Company dated 26th July, 1898.* This definition of the Company's rights has been confirmed by the Colonial Office on several occasions since the date of the letter of 1898.

Historical.

6. The Crown originally claimed neither land nor mineral rights in the Protectorate. These were regarded as belonging to the natives (see Lord Ripon's despatch of 15th January, 1895†) who, through their Chiefs, had the right to grant concessions.

After the grant of the Company's Charter in 1889 the rights of native Chiefs and of third parties, as to the granting and exercise of concessions, were limited—Proclamation dated 10th June, 1891,‡ providing that no Concession was to be recognized till sanctioned and approved by His Majesty's Government.

Concessions Commission, 1893.

In 1893 a Commission was set up to inquire into and define the various concessions which had been granted by native Chiefs up to that date.

This Commission confirmed certain Concessions and disallowed others,§ either as conferring undesirable monopolies or because they had been granted after the date of the Company's Charter—the Company being recognized as holding, in addition to its rights as concession holder, a preferential position from that date.

Starting from the settlement then arrived at the Company was looked upon as being in the position of holding preferential rights to obtain any further concessions which native Chiefs might be disposed to grant and the Crown to approve of; and His Majesty's Government had undertaken that Government officials would use their best endeavours to induce the Chiefs to grant such concessions.

Delimitation of Native Reserves 1899.

Later on (by Proclamation 9 of 1899‖) the various native tribes were limited to Native Reserves and the balance of the Protectorate territories, lying outside the Reserves, were left ownerless.

Crown assumes ownership of Lands outside Reserves 1904 *and* 1910.

Later still (under the Bechuanaland Protectorate (Lands) Order in Council of 16th May, 1904,‖ and finally by Order in Council of 10th January, 1910‖) these ownerless lands were vested in the Crown as Crown lands.

Definition of present rights of the Company.

The position of the Company then was (and now is) that, in addition to such rights as it actually held under concessions from native Chiefs, it had the preferential right to any additional alienation of their rights which the native Chiefs, with the approval of the Crown in the native reserves, or the Crown itself in the remainder of the Protectorate, might be disposed to make in the future.

Inside the Reserves.

Inside the limits of the native reserves the Company is naturally limited by the extent to which native Chiefs may be willing to grant further concessions of a kind which the Crown can approve, but the Crown is pledged to use its best endeavours to assist the Company to obtain such concessions.

Outside the Reserves.

Outside the Reserves there is no one between the Crown and the Company and just as the Crown is pledged to give reasonable assistance to the Company in obtaining proper concessions within the Reserves so, where the Crown has become the sole disposing authority, the Company has the right to expect that the Crown will deal sympathetically with any reasonable proposals which the Company may make for development, in the exercise of its preferential rights.

Company's difficulties in the exercise of its rights and submissions for their redress.

7. Actually, however, the Company feels that it has been unreasonably hampered in turning its rights to account and has had very little real opportunity for

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* Annexure 1. † Annexure 2. ‡ Annexure 3. § Annexure 4. ‖ Not reprinted.

doing so. The discussion of this aspect of the question as well as the submissions which the Company has to make for redress can be conveniently divided under two heads, viz.:—

i. relating to lands outside the Reserves.
ii. relating to lands inside the Reserves.

I. Lands Outside the Native Reserves.

8. The Crown has so far given practical recognition to the Company's rights as to have expressed from time to time its readiness to consider the cession of portions of these territories to the Company but it has insisted, as a condition precedent to such consideration, upon the submission of specific and detailed schemes for the development of such areas.

Specific Schemes.

These territories are, in a large measure, unexplored and Nature has made them difficult and costly to explore. So far as minerals are concerned there is, so far as the knowledge at present available goes, little reason to expect to find them in any one locality rather than in any other; while considerably more must be known than is known yet about the natural conditions of the country before any but the most general proposals can be made for pastoral or agricultural development. An insistence upon specific schemes for development worked out in detail in advance is unreasonable, because it is impossible to comply with such a requirement.

The Company's proposals.

The Company submits that, in addition to giving it the preferential opportunity to develop any proposals which may be made by third parties, the Crown should give favourable consideration to any proposals the Company may make from time to time to assume concessionary rights over particular areas.

The natural desire of the Company to turn such concessionary rights to account would, the Company submits, be a sufficient spur for their adequate development; and the Company should not be hampered by any unreasonably detailed conditions.

The consideration to be paid for such rights by the Company would naturally be for discussion with the Crown, which would, however, presumably bear in mind the intentions expressed in Mr. Chamberlain's letter of 26th July, 1898,* before quoted.

It should be added that all the Company's experience in Rhodesia points to the wisdom of endeavouring to develop the resources of a large, new and unexplored territory in the first instance by searching for and winning minerals, and leads to the conclusion that pastoral and agricultural operations follow in the wake of the mining industry. It is as a rule undesirable to try to make the latter precede the former. Experience also shows that the way to develop the minerals is to encourage and to offer reasonable terms to the initiative of the individual prospector, so that if and when he is successful in discovering payable minerals he as well as the original concessionaire may receive a fair reward.

Mining Law.

The Company submits—and this applies to the whole of the Protectorate territories whether outside or within the native reserves—that the absence of a Mining Law which would enable such reward to be obtained, and which would define the conditions under which mining must be carried on and fix the legal liabilities to be assumed *vis-a-vis* the Administration is, in itself, a completely effective obstacle to development.

II. Lands Within the Native Reserves.

9. In these territories, in addition to the preferential right to obtain concessions hereinbefore referred to, the Company holds certain actual concessions from native Chiefs which have cost it many thousands of pounds.

These rights are of no value to the Company if it is to be denied the right and opportunity to develop them.

Observations on the Policy of Prohibiting Mining Operations.

The Secretary of State's immediate predecessor recently informed the Company† that he held the view that the carrying on of Mining operations by Concessionaires in native reserves was undesirable in the interests of the natives.

* Annexure 1. † Annexure 5, printed as No. 37.

If the future policy in the native reserves is to be framed to give effect to this view, the value of the Company's rights is, to all intents and purposes, destroyed.

The Company cannot believe that this is a result which His Majesty's Government would desire. They feel sure that His Majesty's Government recognize their responsibility as trustees for the legitimate interests alike of all classes of persons residing or having the right to carry on business in any part of the Empire under the administration of His Majesty's Government. But even if the Secretary of State were to approach the problem solely from the point of view of purely native interests (though it is not suggested that he would adopt an attitude so far from being impartial) it would appear manifest that such a policy as that just referred to is not that which would be in the best interests of the natives in the reserves.

Native Advancement dependent on European Enterprise and Production.

Between the admission as a principle of the proposition that native interests must be the sole or the governing consideration for the Secretary of State (if that were admitted) and a decision to discourage any development in the reserves by Europeans, there lies a very wide gap. The question would be what policy would in practice be best calculated to serve native interests. The whole history of British South Africa suggests the answer that if what is aimed at be, as assuredly it must be, the advancement of the natives in civilization and in wealth, such advancement must come about through increased production from the country in which they live. Such increased production is not likely to come about otherwise than through European enterprise.

Experience in the Union.

The Cape.

If the natives in what is now the Union of South Africa have made remarkable progress in the desired direction, as undoubtedly they have, since the days of the "Kaffir Wars" of 50 or 60 years ago, it is because they have had their share of the wealth flowing from the great material production which has taken place in the intervening period. This has been primarily a mineral production. The value of it in the old Cape Colony, now the Cape Province, derived from the Kimberley mines since their beginning, is estimated at over £130,000,000. Not only have the natives shared directly in this wealth, it has enabled their Government to make a degree of provision for the extension of the railway system, for the preservation of peace and order amongst the natives, for their education, for the encouragement of their agriculture, and, in some districts, for a simple form of local municipal self-government for them, which would have been quite impossible otherwise.

The Transvaal.

Rhodesia.

Not less remarkable is the case of the Transvaal, where just before the discovery of the Witwatersrand, which has produced gold to the value of over £700,000,000 since 1886, an almost bankrupt Government lived in constant fear of attack from savage and war-like tribes, or that of Rhodesia, where the primitive barbarism of 35 years ago has given place to a state of native affairs to which the present Secretary of State, speaking in the House of Commons on the 26th April, 1921, paid a generous tribute. So rapid a change for the better could never have taken place but for the production in Southern Rhodesia by European effort, fostered by the Company, of gold to the value of over £57,000,000 besides much other mineral wealth since 1889, and in the Congo of copper to the value of approximately £20,000,000 since 1911, which latter production has been the direct cause of the Rhodesian railway system being extended right through the western part of Northern Rhodesia. It is submitted that these results could not have been obtained if mining operations had not been carried on by white "Concessionaires" in these territories—"Concessionaires" being in fact persons possessing mining rights.

The Bechuanaland Protectorate contrasted.

In the Bechuanaland Protectorate alone, though inter-tribal bloodshed has ceased, it is not possible to recognize much progress among the natives in civilization and material well-being. It can hardly be doubted that the lack of such progress is due to the fact that the territory has been virtually closed to European enterprise; while such improvement in the condition of the natives as has taken place has been mainly due to the work of the Company in carrying the line of railway through the Protectorate.

Generally the standard of the natives in the Bechuanaland Protectorate is a low one; nor in the absence of a spur to self-advancement coming from outside (such as would be supplied by close contact with the example of Europeans in their midst and by the opportunities of working for good wages which such contact brings with it), is there any likelihood that they will ever emerge from their present backward condition. They are more likely to stagnate in isolation for ever.

Such a future cannot be regarded as being in their best interests.

A measure of European infiltration is therefore essential. White people will only go into those reserves, in which they are prohibited from acquiring land, in search of minerals; yet it is, precisely, development of this nature that forms the subject of the Colonial Office letter of 20th June, 1924,* above referred to.

The policy set out in that letter runs counter, as has been shown, to that under which all South African development so far has taken place, and under which the natives, as a whole, have made all the progress that they have achieved.

The Company's proposals.

The Company therefore submits that the Crown should reconsider its attitude with regard to the development of the resources of the native reserves. Where such development has the consent of the native Chiefs it should be encouraged subject to reasonable and normal administrative supervision. Where the Chiefs themselves are opposed to it, they should be educated in the direction in which their real interests lie.

Mining Law.

Here again, the promulgation of an appropriate and workable Mining Law is essential in the interests of development.

Individual Native Reserves.

10. Paragraph 9 deals with the general question arising in regard to the native reserves. There are, however, outstanding matters for settlement between the Company and the Imperial Government in the individual reserves themselves.

The Company has obtained some, and is interested in other, concessions in these reserves. Details of these Concessions and of a few others in which the Company is not interested, with a short history in the case of each, are attached hereto.†

These Concessions have cost the Company upwards of £250,000‡ reckoning simple interest at 5 per cent. on the monies expended as from the date of their expenditure and the Company is at present paying out to the native Chiefs about £1,300 a year. The total monies received by Chiefs in respect of these Concessions is approximately £35,000 without interest. The original acquisition of the Concessions was, it will be remembered, essential to the execution of the policy upon which the Crown and the Company were at the time agreed, of extending British influence through the Protectorate into what is now Rhodesia.

Outstanding Matters.

11. The outstanding matters in relation to these Concessions are the following —in each case the notes set out in Annexures 6 and 7 are available for reference.

i. BAMANGWATO RESERVE.

During the life-time of the Chief Khama very little was allowed to be done to develop the important concession obtained from this Chief, in deference to his objections to any such development.

A certain amount of prospecting has been accomplished and the Company has given out certain (still existing) rights to third parties, notably in the Shashi-Macloutsie area and at the Bushman Claims.

Quite recently, however, the Crown has encouraged the Chief Sekgoma, who is the successor to Khama, to terminate his concession to the Company.§

The Company has taken advice on this proposal and it is to the effect that the Chief is not entitled to take such a course.

Company's submissions.

The Company submits:—

(*a*) The advice given to the Chief Sekgoma, through the Resident Commissioner, that he is entitled to terminate the Company's Concession by giving a year's notice, ought to be withdrawn.

* Annexure 5, printed as No. 37. † Annexure 6. ‡ See Annexure 7. § Annexure 8, printed as Nos. 29 and 34.

(*b*) It should be confirmed that the position is that the Concession cannot be terminated except in the event of the neglect of the Company to pay the annual subsidy of £300.

(*c*) The Imperial Government should use their influence with the Chief Sekgoma to induce him to allow the Company full legitimate scope for turning to practical account the Concession granted by his father.

ii. BAKHATLA RESERVE.

iii. BATAWANA RESERVE.

In the case of the Concessions held by the Company or its friends in these reserves, the Crown has recently declined to ratify extensions or modifications of the Concessions notwithstanding that the Chiefs themselves have agreed to such extensions or modifications.*

The Company submits:—

(*a*) *In the case of the Bakhatla Reserve.*

The new rights which the Chief Linchwe granted to the Linchwe Concessions Company in 1923 should be confirmed, and the Linchwe Concessions Company thereby allowed to prospect with the object of marking out a new area of 100 square miles.

(*b*) *In the Case of the Batawana Reserve.*

The decision not to ratify the extension of this Concession which the Chief Mathibi has granted to 28th August, 1929, should be reversed.

The principle should be established that in view of the heavy expenditure on this Concession (some £60,000), the Company should be given the fullest opportunity to turn its rights to account whether by a further extension of the existing Concession or otherwise.

iv. BAKWENA RESERVE.

v. BANGWAKETSI RESERVE.

vi. BAMALETE RESERVE.

Compensatory Allowances.

In these reserves the Company has, since 1895, been making certain compensatory allowances to the native Chiefs (see Annexure VIII).

These allowances were made to the Chiefs as an act of grace and at the request of His Majesty's Government at a time when it was the intention eventually to hand over to the Company the administration of the territories. They were paid to mitigate disappointment on the part of the Chiefs on the disallowance of certain monopoly Concessions which they had granted and to assist His Majesty's Government in the preservation of good feeling among the natives.

The Company is prepared to continue the payment of these allowances, notwithstanding that it is no longer primarily concerned with the purpose for which they are paid, provided that it is allowed full legitimate opportunity to make use of its rights in the Protectorate territories as a whole.

Summary and Conclusion.

12. The arguments set out in this memorandum can be compressed into a few words.

i. The Company is asking for no more, by way of recognition of its rights, than it has been repeatedly admitted to possess.

ii. Its rights are only of any value to the extent to which it is enabled to turn them to account.

The Company submits that admission of its rights should imply, at the same time, full recognition of its right to the legitimate development thereof and, as a consequence, that it is entitled to receive a generous measure of sympathy and support from the Crown on any legitimate proposals it may, from time to time, make with that end in view.

A condition precedent to the carrying out of such proposals is the promulgation of an equitable and workable Mining Law.

If at any time the Crown should divest itself of the administration of the Protectorate territories the Company suggests that it is entitled to ask that its rights,

* Annexure 9, two items of which are printed as Nos. 26 and 37.

in the sense thus described, ought to be fully protected prior to any transfer of administrative authority to other hands.

Finally the Company would remind the Secretary of State that the extension of British authority over the Bechuanaland Protectorate, the acquisition, at very heavy cost, by the Company of its concessions from the local Chiefs, and of its preferential position in regard to further concessions from those Chiefs or from the Crown as the case may be, and the construction by the Company of the line of railway through the Protectorate, were successive steps taken, in the concluding years of the last century, in the prosecution of a policy recognized at the time by the Crown as being of Imperial importance. The grant to the Company of the Charter itself was but one of such steps. The truth of these propositions will not be denied. It will be sufficient to refer by way of illustration to one letter, that addressed by the Colonial Office to the Foreign Office on the 16th May, 1889, in anticipation of the grant of the Charter (Annexure X). From the Crown's point of view the policy thus indicated has been carried out with complete success; but hitherto, so far as the Bechuanaland Protectorate is concerned, the failure of the Crown to give practical effect to the assurances of support by which the Company was encouraged to undertake its task under the Charter has been no less complete. The Crown, which has in full measure reaped the fruits of the successful prosecution of a policy dependent for its success on the Company's exertions and expenditure, owes it to its own good faith to secure that the Company on its side shall not be deprived of its fair share of those fruits.

2nd January, 1925.

ANNEXURE 1.

*Extract from Colonial Office letter to the British South Africa Company, 26th July, 1898.**

* * * * * * *

"MR. CHAMBERLAIN is advised that the promises made by his predecessors implied that the Company should have preferential rights in respect of the acquisition of concessions, but not exclusive rights; that is to say, that while the Government was pledged not to recognize future concessions to other parties until the Company should have had the option of acquiring them, there was no undertaking that for all time to come no concession would be recognized even if the Company had declined to accept and work such concession.

Your Directors will no doubt agree with Mr. Chamberlain that the above is a reasonable interpretation of the undertakings contained in Lord Ripon's despatch of 20th December, 1892.†

Mr. Chamberlain is also advised that though there is no express agreement on the point, it would be in accordance with the spirit of the arrangement that the Company should have the same rights in lands over which there exist no such rights in native chiefs as would enable them to grant concessions either where no such rights ever existed, or where such rights have been abandoned by the chiefs.

Mr. Chamberlain is further advised that the Company's preferential rights still exist except in so far as they may have been modified by the fact that the administration of the Protectorate is not to be transferred to the Company.

I am to observe that the last-mentioned reservation is important as it renders it necessary that in any arrangement which may be made for the development of the Protectorate the Government should retain the right in all cases of taking whatever land it may require for its own purposes, and should exact a fair contribution from the grantees or occupiers of land or mineral rights in the Protectorate towards the expenses of administration."

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* No. 269 in African (South) No. 539. † No. 42 in African No. 441 and pp. 26-30 of C.7154.

43

ANNEXURE 2.

*Extract from despatch from Lord Ripon to the High Commissioner for South Africa, dated 15th January, 1895.**

* * * * * * *

"5. This country as the Protecting Power does not claim mineral or land rights in the Protectorate, nor do I think that this is a convenient opportunity to consider the question of departing from the attitude hitherto taken up on the subject. Quit rents should, therefore, if reserved, be payable to the Chiefs, and reservations of minerals, etc., should be in their favour."

* * * * * * *

ANNEXURE 3.

Extract from High Commissioner's Proclamation, 10th June, 1891.

* * * * * * *

"45. No concession or grant heretofore or hereafter made by any Native Chief, whether or not accompanied or supported by any power of attorney or instrument or document of procuration, and no power of attorney or instrument or document of procuration heretofore or hereafter granted by any such chief coupled with an interest in favour of some other person, whether such interest be apparent or not in the face of such power, instrument or document, shall be recognized by any Court of Law unless and until sanctioned and approved by Her Majesty's Secretary of State."

* * * * * * *

ANNEXURE 4.

Extract from Lord Ripon's despatch to the High Commissioner, dated 20th December, 1892.†

* * * * * * *

"VI. You will not recognize as valid any concessions subsequent in date to the Charter, granted to the British South Africa Company, viz., the 29th of October, 1889."

* * * * * * *

"Provided that the undertaking of the Government not to recognize as valid concessions subsequent in date to the Charter shall not be deemed to include grants by Chiefs to individuals of sites for houses, stores, schools, chapels, etc., and for garden and grazing grounds found in actual occupation."

* * * * * * *

ANNEXURE 6.

Bamangwato Reserve.

Chief Khama—now Chief Segkoma.

Existing Concession.

Granted 25th July, 1893, by Chief Khama to British South Africa Company superseding a Concession granted 16th December, 1897, to Bechuanaland Exploration Company.

Confirmed by Lord Ripon, 23rd November, 1893.‡

Rights—

a. Sole and exclusive rights to prospect for precious stones, minerals and metals throughout Khama's territory (with certain reservations).

b. Sole and exclusive mining right and Concession to search for, work and win precious stones, gold, silver, platinum, copper ore and all other minerals.

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* No. 5 in African (South) No. 537. † See pp. 26-30 of C.7154. ‡ No. 75 in African (South) No. 469.

c. Khama binds himself his heirs successors and assigns not to grant any other Mining Concession or right to anyone else.
d. Sundry users.

Consideration.

To *Bechuanaland Exploration Company.*

i. Cost of 60,000 United Concession shares, £14,516 1s. 0d.
ii. Cash, £1,000.
iii. Certain Land and Mineral rights in Southern Rhodesia.

To *Khama* (exclusive of any consideration he may have received from the Bechuanaland Exploration Company in respect of 1897 Concession), £25 a month on the discovery in payable quantities of any gold, precious stones, minerals or metals.

Note.—As from 1st January, 1917, on the production of copper from the Bushman Claims by the Bechuanaland Copper Company, £300 a year has been paid to Khama. (£2,400 to end of 1924.)

Total cost to the Company, say, £18,000
plus value of rights given to Bechuanaland Exploration Company in Southern Rhodesia, plus cost of 1910 Prospecting Expedition £1,840

Further the Bechuanaland Copper Company has spent some £40,000 on the development of copper in the Bushman Claims.

Third Parties.

Certain rights have been granted by the Company to Third Parties under this Concession.

General.

During the lifetime of the Chief Khama, little could be done in the way of development, in deference to his objections to any influx of white settlers—notwithstanding that he had himself granted the Concession to the Company.

On the death of Khama the Company wrote to the Colonial Office (9th April, 1923*) asking whether the Crown would now be more favourably disposed to allowing the Company to turn its rights under this and other Concessions in the Protectorate to practical account. The reply of 26th April, 1924,† intimated that, on the contrary, Khama's successor desired to cancel the Concession and that the Crown had been advised that he would be entitled to do so on giving, say, one year's notice. Segkoma was subsequently advised of this view by the Resident Commissioner.

Up to the present Seekoma has not given any formal notice of cancellation. The Company is advised that he has no right to cancel the Concession so long as the Company fulfils its obligations under it.

Bakhatla Reserve.

Chief Lenchwe—recently deceased.

I. *Original Concessions.*

Granted 25th August, 1890, by Chief Lenchwe to Julius Weil.

1. A *Trading Concession* which, on submission to the Concessions Commission in 1893 was allowed in a modified form‡ (The British South Africa Company is not interested in this).
2. A *Mineral Concession* which was disallowed by the Concessions Commission.

   With regard to the disallowance of this latter Concession the British South Africa Company was asked by the Imperial Government and agreed to make an annual subsidy to Lenchwe of £70 a year. The payment of this annual sum was on various occasions tendered to the Imperial Authorities by the Company but returned by them, the Imperial Authorities finally deciding that the payment was unnecessary.

II. *Existing Concessions.*

Granted 22nd July, 1898, by Chief Lenchwe to Julius Weil.

Confirmed.

Rights.—Sole and exclusive right to prospect, for five years, for precious stones, gold, silver, platinum and other minerals with the right during that period to select and demarcate an area of 100 square miles.

* No. 9. † No. 29. ‡ See No. 5 in African (South) No. 537.

Consideration payable to Lenchwe, £100 a year.

This Concession was, with the approval of the British South Africa Company, taken over on 12th December, 1898, by the Lenchwe Concession Company, Limited.

The five year period was renewed twice to 22nd July, 1913, and the mining area of 100 square miles was demarcated in 1910.

A fair amount of prospecting has been carried out from time to time and nothing of any value has yet been discovered in the Mining area demarcated.

In 1923 Chief Lenchwe granted to the Company a new right—for a period of two years from 1st April, 1924, to prospect his territory and select a new area of 100 square miles—the area demarcated in 1910 to be abandoned upon the selection of the new area and, as soon as the new area is demarcated the annual subsidy to be increased to £200.

The Crown (letter of 5th July, 1924, from the Colonial Office*) has declined to confirm this new grant on the ground that it would not be in the general interests of the natives of the reserve.

The Chief Lenchwe has received in annual payments about £2,500.

Bakwena Reserve.

Chief Sechele—now Sebele.

I. *Mineral Concession.*

Granted 28th August, 1889, by Chief Sechele to Sydney Morris and assigned by him to the Secheleland Concessions Syndicate and subsequently acquired by the British South Africa Company.

Rights (as modified by Colonial Office letter 15th [14th] January, 1895,† with regard to the Concessions Commission). Sole rights to prospect in the Bakwena territory for precious stones and precious metals for a period of five years from a date to be fixed, with the right to mark off, during that period, an area for mining operations not exceeding ten miles square (100 square miles).

Consideration to the Chief Sechele.

For the original Concession £1,000 cash and £400 per annum for the Concession as modified. £360 a year was paid up to the end of 1902 since when with the approval of the High Commissioner the annual subsidy has been reduced to £180 a year and is still being paid. Total (say) £7,500.

To the Secheleland Concessions Syndicate.

On the taking over of the Concession by the British South Africa Company on 3rd December, 1895 (as modified) £15,000
Total cost to the British South Africa Company.
(360×7) + (180×22) + 15,000 £21,500

II. *Monopoly Concessions.*

Granted by Chief Sechele on 28th August, 1889, to Sydney Morris and disallowed by the Concessions Commission, the Chief to be compensated for his loss by the British South Africa Company. The compensation paid to the Chief in this connexion forms part of the annual sum of £225 referred to below under III.

III. *Land Concession.*

Granted 8th June, 1891, by Chief Sechele to Messrs. Riesle and Nicholls.

Rights.—A perpetual lease of 800 square miles of territory for an annual rental of £200.

This Concession, as far as the original concessionaires were concerned, was never formally confirmed and in accordance with the arrangement for the compensation of native Chiefs by the British South Africa Company, in cases where concessions were disallowed, an annual subsidy of £225 has been paid to Sebele—this sum being regarded as covering the compensation in respect of this and the disallowed monopoly concessions referred to above. When, however, the arrangements were being made for the handing over of the Tuli, Gaberones and Lobatsi blocks to the Company the Colonial Office made it a condition that the Company should acquire for what they might be worth such rights as Messrs. Riesle & Nicholls might hold under this Concession and such rights were purchased by the Company, in 1899, for £12,000.

The Chief, in respect of the annual subsidies, has therefore received about £6,500, while the total cost to the Company is about £18,500.

* Printed as Annexure 9. † No. 7 in African (South) No. 537.

Bangwakatsi Reserve.
Chief Gaseitsive—now Bathoen.

I. *Concessions belonging to Balkis Land Company.*

i. Granted by the Chief Gaseitsive, 29th March, 1888, to John Williams.

ii. Granted by the Chief Gaseitsive, 13th October, 1887, to Messrs. Wooley, Nicholls and Riesle.

Each giving the right to prospect and to select a mining area not exceeding 400 square miles.

Both these Concessions were confirmed by the Concessions Commission and both are in the ownership of the Balkis Land Company.

II. *Land Concession.*

Granted 4th February, 1893, by Chief Bathoen to the Kanya Concessjons Company.

Rights.—A lease of 200 square miles of territory for an annual rental of £100.

In the case of this Concession the same note applies as in the case of the Concession in the Bakwena Reserve granted by Sechele on 8th June, 1891, to Messrs. Riesle & Nicholls, except:

i. In this case the annual payment made by the Company to Bathoen is £150, or a total to date of, say, £4,500.

ii The consideration paid to the Kanya Company by the British South Africa Company on its acquisition of the Kanya Company's rights was the granting of certain rights in Matabeleland.

Bamalete Reserve.
Chief Ikaning—now Seboko.

In respect of two Concessions granted to various parties in 1888 and 1891—both of which were disallowed by the Concessions Commission on the grounds that the Chief did not understand the Concessions when granting them—the Company has since 1895 paid a compensatory allowance of £50 per annum to the Chief Ikaning and his successors (now Seboko).

The total amount paid to date being about £1,500.

Batawana Reserve.
Chief Moremi—now Mathibi.

I. *Austral African Exploration and Mining Syndicate.*

Granted by Moremi 14th August, 1888, to Austral African Exploration and Mining Syndicate.

Rights.—A concession of the mineral rights in perpetuity of 400 square miles.

Decision as to this Concession was reserved by the Concession Commission, and there is no record as to whether it was ever ratified.

II. *Mineral Concession.*

Granted 28th August, 1889, by Moremi to Messrs. Stromborn Nicholls and Hicks, *amended* 28th September, 1896, by Segkoma in favour of British West Charterland Company.

Rights.—i. Sole right to 28th August, 1909, to prospect for gold, other minerals and precious stones.

ii. Sole right to dig for, win and retain any gold, precious stones or minerals found until the Concessionaires give up their rights.

Consideration to Moremi.

£150 cash down, £400 a year from 28th September, 1896, and a 2 per cent. Royalty on the net value won (commutable at £400 per annum from the date of the discovery of payable quantities). On 23rd November, 1899, the British South Africa Company purchased the rights of the British West Charterland Company under the Concession for £52,000 plus a 10 per cent. share on any net profits.

On 1st July, 1909, Mathibi agreed to an extension of the Concession to 28th August, 1919, the annual payment to be reduced to £300 per annum from 28th August, 1909.

In July, 1919, Mathibi consented to a further renewal of the Concession for ten years to 28th August, 1929, but the Colonial Office would only consent to ratify a renewal to 28th August, 1924.*

* See No. 21.

When in 1924* the Company asked for ratification of the extension of the Concession to the date originally agreed to by Mathibi, viz., 28th August, 1929, the Colonial Office refused on the ground that "the carrying on of mining operations by Concessionaires in native reserves is undesirable in the interests of the natives."

The Company, in September, 1924, tendered its cheque for the half-year's payment to Mathibi to 28th February, 1925, but the cheque was returned by the Protectorate Administration.

The position therefore is, that notwithstanding that Mathibi is willing to extend the Concession and has done so up to 28th August, 1929, the Colonial Office have not ratified any extension after 28th August, 1924, and the Protectorate Administration have declined to accept the Company's cheque in respect of the period since that date.

The Chief, by way of annual payments under this Concession, has received about £10,000.

The Company has expended about £60,000.

Baralong Farms.

These farms (41 in number) are held by members of the Baralong tribe by virtue of grants of occupation issued by the Baralong chief Montsioa.

They were specifically excluded from the operation of the Order in Council of 10th January, 1910,† under which the Crown assumed ownership of the unalienated lands in the Protectorate.

On 4th February, 1888, the Chief Montsioa granted a Concession to the Eclipse G.M. Syndicate the terms of which (as modified by the Concessions Commission) were the sole right to prospect for five years from a date to be fixed—in Montsioa's territories and to mark off an area not exceeding ten miles square (100 square miles) —Montsioa to receive £200 a year.

The Concessions Commission's ruling only applied to the Concession as far as it concerned Montsioa's territories within the Protectorate.

The date from which the five years sole right started was subsequently fixed at 1st August, 1904, and was extended to 31st July, 1914. Montsioa to receive an additional £50 per annum and the Protectorate Government £50 per annum.

There is no record as to whether it was further extended or whether the mining area specified was marked out before the 31st July, 1914.

ANNEXURE 7.

COMPENSATORY AND OTHER ANNUAL SUBSIDIES PAID BY THE BRITISH SOUTH AFRICA COMPANY TO NATIVE CHIEFS IN THE BECHUANALAND PROTECTORATE.

Reserve.	*Chief.*	*Reason for payment (see Annexure 6).*	*Annual Amount now paid.*	*Estimated total monies received by Chief to date.*
Bakwena	Sebele	Compensatory	£225	£6,500
Bangwaketsi	Bathoen	do.	150	4 500
Bamalete	Seboko	do.	50	1,500
	Total Compensatory payments ...		£425.	
Bamangwato	Segkoma	Mineral concession	£700	£2,400
Bakhatla	*Successor to Linchwe	do.	100	2,500
Bakwena	Sebele	do.	180	7,500
Batawana	Mathibi	do.	300	10,000
	Total other payments ...		£880	
	Total		£1,305	

Note.—* The payment to the Chief Linchwe, for the Mineral Concession, is made by the Linchwe Concessions Company.

* See No. 21. † Not reprinted.

ANNEXURE 9.

(No. 29755/24.)

SIR, Colonial Office, Downing Street, 5th July, 1924.

WITH reference to the letter from this Department No. 26980/24 of the 20th June,* regarding the mineral concessions of the British South Africa Company in the Bechuanaland Protectorate, I am directed by Mr. Secretary Thomas to request you to inform your Directors that he has now received a report from the High Commissioner for South Africa regarding the Linchwe Concession. The High Commissioner is in agreement with the view held by the Secretary of State that it would not be in the general interests of the natives of the reserve that the proposed new concession should be confirmed.

I am, Sir,
Your obedient Servant,
(Sgd.) C. T. DAVIS.

The Secretary,
British South Africa Company.

ANNEXURE 10.

Letter from Colonial Office to Foreign Office.†

SIR, Downing Street, S.W., 16th May, 1889.

I AM directed by Lord Knutsford to transmit to you the enclosed copies of correspondence between this Department and Lord Gifford, V.C., Chairman of the Exploring Company (Limited)‡ relative to the grant of a Royal Charter to a company to be formed for developing the Bechuanaland Protectorate and the countries to the north.

I am also to enclose a copy of a letter from Mr. C. J. Rhodes, of the Cape Colony,‡ and two other gentlemen, who, as representing the holders of what is called the Rudd Concession from Lo Bengula, state that they have arranged with Lord Gifford's Company to co-operate in any such scheme as that proposed. In fact, it is understood that the combination, of which Lord Gifford and Mr. Rhodes are the leaders, hope to be able to unite most if not all the existing British interests in the Protectorate and the countries to the northwards.

I am to observe that, in consenting to consider this scheme in more detail, Lord Knutsford has been influenced by the consideration that if such a company is incorporated by Royal Charter its constitution, objects and operations will become more directly subject to control by Her Majesty's Government than if it were left to these gentlemen to incorporate themselves under the Joint Stock Companies Acts, as they are entitled to do. In the latter case, Her Majesty's Government would not be able effectually to prevent the company from taking its own line of policy, which might possibly result in complications with native Chiefs and others, necessitating military expenditure and perhaps even military operations. The example of the Imperial East African Company shows that such a body may, to some considerable extent, relieve Her Majesty's Government from diplomatic difficulties and heavy expenditure. In Lord Knutsford's judgment such a company as that proposed for the Bechuanaland Protectorate, if well conducted, would render still more valuable assistance to Her Majesty's Government in South Africa.

At present nothing could be more unsatisfactory than the condition of things existing in that quarter. Every year large grants have to be obtained from Parliament nominally in aid of civil expenditure, but almost altogether swallowed up in the maintenance of a semi-military police force, whilst the peace of the country is by no means as well assured as it ought to be, and fresh demands are being made on Her Majesty's Government for further expenditure on an increase of the police and telegraph construction, pronounced to be absolutely necessary for the safety of the country.

I am, &c.,
(Sgd.) JOHN BRAMSTON.

The Under Secretary of State,
Foreign Office.

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* No. 37. † Printed in full as No. 76 in African (South) No. 372. ‡ Not printed here

3126

No. 44.

THE SECRETARY OF STATE to THE HIGH COMMISSIONER.

[*Answered by No.* 46.]

(Confidential.)

MY LORD, Downing Street, 21st January, 1925.

I HAVE the honour to transmit to you, for your information, a copy of a memorandum* which has been submitted by the British South Africa Company with regard to their position in the Bechuanaland Protectorate.

I have, &c.,
L. S. AMERY.

7620

No. 45.

THE HIGH COMMISSIONER to THE SECRETARY OF STATE.

(Received 17th February, 1925.)

(Confidential.)

SIR, High Commissioner's Office, Cape Town, 29th January, 1925.

WITH reference to my Confidential despatch of the 25th September last,† I have the honour to transmit, for such action as you may consider necessary, a copy of a despatch from the Resident Commissioner of the Bechuanaland Protectorate enclosing a letter from the local Secretary of the British South Africa Company asking for the support of the Administration in obtaining for his Company a mineral concession from Chief Seboko of the Bamalete.

You will observe from paragraph 8 of the Resident Commissioner's despatch that the letter has been acknowledged, and I have informed Mr. Ellenberger that no further reply need be sent for the present.

I have, &c.,
ATHLONE.
High Commissioner.

Enclosure in No. 45.

(Confidential.)

Resident Commissioner's Office, Mafeking.
24th January, 1925.

MY LORD,

WITH reference to my Confidential despatch of the 25th September last,† I last, regarding the subsidy payable by the British South Africa Company to Seboko, Chief of the Bamalete, and the question of the competency of that Chief to grant any mineral concession over the Bamalete Reserve, I have the honour to inform Your Excellency that the Company's Local Secretary, Cape Town, was, on the 29th September, written to as suggested in paragraph 2 of the above-mentioned despatch.

2. In acknowledging receipt of the letter, Mr. Philip stated that he had communicated its contents to the Company's General Manager in Salisbury, and, except for the fact that in October last Seboko received through my Office a cheque from the Company for £50, being subsidy for the year ended on the 31st December last, I heard nothing more of the matter until a few days ago when the Government Secretary received from Mr. Philip the letter a copy of which is herewith submitted for Your Excellency's consideration.

3. Your Excellency will observe therefrom that the Company is seeking this Administration's support towards obtaining a mineral concession from Seboko, and that the Company's claim for such support is based on correspondence which passed between 1892 and 1894.

4. In this connexion, and with reference to the last paragraph of Mr. Philip's letter wherein he refers to "exclusive" mineral rights over Seboko's country, I would

* No. 43. † No. 42.

draw attention to the Law Officers' Report embodied in their letter of 2nd June, 1898, to the Colonial Office*; in which the opinion is expressed that the Government bound itself in express terms to help the Company to get concessions of minerals, agricultural lands, etc., and that although its promises implied that the Company should have preferential rights in respect of the acquisition of concessions, yet they did not imply "exclusive rights."

5. I would draw attention also to the Colonial Office letter of 26th July, 1898,† in which this opinion was communicated to the British South Africa Company, and to that portion of the Colonial Office letter of the 13th June, 1913,‡ to the British South Africa Company in which Sir Hartmann Just said:—

> "It will be remembered that Lord Ripon's original undertaking to the Company regarding the acquisition of concessions from native Chiefs was made subject to the conditions, *inter alia*, that the Company would use due diligence in seeking and developing them (see page 29 of I.C. 7154)."

6. I have no copy of Blue Book C. 7154, but I infer that Lord Ripon's original undertaking referred to by Sir Hartmann Just was that given in paragraph 4 of Lord Ripon's despatch of the 20th December, 1892§ (the Railway Despatch of which I have no copy either), viz., that Government officials in Bechuanaland and the Protectorate would be directed to use their best endeavours to assist the British South Africa Company in obtaining concessions from the native Chiefs.

7. If this inference is correct, I submit that the Company, having allowed over thirty years to pass without seeking the concession which they are now contemplating from Seboko, cannot be said to have used due diligence in the matter; further, that the time has also passed during which it was open to them to use diligence in seeking such concessions from other Chiefs of the Protectorate, and that the time has therefore also gone by during which the officials of the Protectorate were to have assisted them in obtaining such concessions from the Chiefs.

8. I should, however, be glad if Your Excellency would be so good as to give me definite instructions on this last point and also directions as to the reply to be returned to Mr. Philip; his letter has been acknowledged and he has been told that the matter is receiving attention.

I have, &c.,
J. Ellenberger,
Resident Commissioner.

His Excellency
The High Commissioner,
Cape Town.

Sir, Cape Town, 9th January, 1925.

Bechuanaland Protectorate—Annuity to Chief Seboko.

I have the honour to refer to your letter of the 14th April last on the subject of the subsidy paid to the Chief of the Bamalete, and would again seek your support in obtaining a mineral concession from Seboko.

The Company's claim for such support is based on the clearly defined attitude of Her Majesty's Government at the time when it was considering proposals for extending the main railway line through British Bechuanaland and the Protectorate, and was seeking assistance of the Company in settling the rights of various native Chiefs whose country would be affected thereby. The correspondence which passed between 1892 and 1894 leaves no doubt as to Her Majesty's Government's disposition to secure to the Company an exceptional and privileged position in the Protectorate, in return for the efforts which the Company was prepared to make to open up that territory by railway development and by other means.

I may refer you first to Lord Ripon's despatch of the 20th December, 1892, to Sir Henry B. Loch, then High Commissioner for South Africa (reprinted in Blue Book C.7154). This despatch indicated various directions in which Her Majesty's Government would, in consideration of financial and other assistance given by the British South Africa Company, co-operate for the furtherance of the scheme of railway development. One of the undertakings given by Lord Ripon was contained in paragraph 9 (IV) of the despatch and was as follows:—

* No. 173 in Vol. V of Law Officers' Opinions. † No. 263 in African (South) No. 530.
‡ No. 11 in African (South) No. 1003. § See pp. 26-30 of C.7154.

> "The Government Officials in Bechuanaland and the Protectorate to use their best endeavours to induce the Chiefs and people in Bechuanaland Protectorate to grant to the British South Africa Company concessions of minerals, agricultural lands and town sites over areas not already made the subject of valid and recognised concessions to others."

Again on the 11th December, 1894,* the Colonial Office wrote to the Company with reference to certain concessions to third parties which had been disallowed, and suggested contributions from the Company for the purpose of allaying the discontent which the Chief (among whom was Ikaning) might feel at the discontinuance of the rentals paid by the concessionnaires. It went on to say "such disallowance will of course leave the field clear for the British South Africa Company to approach the Chiefs with a view of obtaining land and mineral concessions on their own behalf."

The Company in a letter to the Colonial Office of the 12th December, 1894,† agreed to the Government's proposals for yearly allowances to the Chiefs affected by the disallowance of the concessions and to certain other proposals contained in the Colonial Office letter. In expressing their willingness to adopt the suggested arrangement the Company made the following statement:—

> "My Directors in making these proposals trust that Lord Ripon will recognize the sincere desire they have of facilitating the settlement of these long vexed questions, and therefore hope that Her Majesty's Government on their part will equally assist the Company by the issue of instructions in the sense of paragraph 9 (IV) of the Railway Despatch referred to (which is then quoted). His Lordship will recollect this was also the policy laid down by his predecessor in a despatch to the High Commissioner dated 3rd January, 1890,‡ wherein he is instructed in the first place to steadily decline to recognize such concession (supposing it to be subsequent to the period when the granting of the Charter was agreed to) as it is brought before you, and, in the second place, to bring pressure to bear on the Chiefs to abstain from granting concessions except to the Chartered Company and its allied Companies, explaining to the Chiefs that, as the Charter has been granted and as the Chartered Company is doing so much for the public good, the interests of all parties are best secured by strengthening its position."

From the above facts, I think the Company is entitled to expect the support of the Government in any overtures made to Ikaning's successor for exclusive mineral rights over his country.

I have, &c.,
F. B. Philip,
Local Secretary.

The Government Secretary,
Headquarters House,
Mafeking.

28511

No. 46.

The High Commissioner to the Secretary of State.

(Received 23rd June, 1925.)

[*Answered by No.* 53.]

(Confidential (2).)

Sir, High Commissioner's Office, Cape Town, 5th June, 1925.

I have the honour to refer to your despatch Confidential of the 21st January,§ forwarding for my information a memorandum prepared by the British South Africa Company dealing with their position in the Bechuanaland Protectorate.

2. In my despatch Confidential of 20th June, 1924,‖ I expressed the view that the conduct of mining operations by concessionnaires in the native reserves is undesirable in the interests of the natives and that "the only satisfactory solution of the problem is to adopt a policy designed to limit the period of duration of all concessions with a view to their termination at the earliest possible moment."

* No. 2 in African (South) No. 537. † No. 3 in African (South) No. 537. ‡ No. 208 in African (South) No. 372. § No. 44. ‖ No. 39.

3. On pages 22 and 23 of the memorandum forwarded with the last-mentioned despatch alternative methods of giving effect to the policy referred to in the previous paragraph are suggested. They may be briefly summarized as follows:—

(1) By legal action;

(2) By compensating the Company in either (*a*) the Protectorate Crown lands, or (*b*) other African territories.

(3) By negotiation.

I propose to review these methods in order.

(1) It is most unlikely that Sekgoma would attempt to terminate the Khama Concession by legal action without consulting the Administration, and as the Company would be almost certain to challenge him at law, the Crown would become involved in expensive litigation with no sure prospect of success.

(2) (*a*) Owing to the inaccessibility of the Crown lands and the waterless character of the greater portion of them it is doubtful whether the Company would regard an offer of the mineral rights over these areas as sufficient compensation for the surrender of those which they hold in the native reserves, and the policy of the Colonial Office is opposed to any further alienation of land in the Protectorate.

(*b*) I am not in a position to discuss the question of compensating the Company in other parts of Africa, but the proposal does not seem very practicable.

(3) It would appear therefore that the only satisfactory solution would be to negotiate with the Company with the object of limiting the duration of existing concessions and gradually restricting the scope of mining operations to a selected area or areas.

4. Some weeks ago Mr. Dougal Malcolm, a Director of the Chartered Company and the author of the memorandum forwarded with your despatch of 21st January,* arrived in South Africa and had an informal discussion with the Imperial Secretary on the subject of his Company's position in the Bechuanaland Protectorate. He inquired whether I had received a copy of his memorandum, and on being informed that I had been supplied with one he asked if the High Commissioner had any official or informal observations to offer on its contents.

5. The occasion appeared to provide an opportunity for exploring the prospects of reaching a suitable agreement with the Company without committing either the Secretary of State or the High Commissioner, and the Imperial Secretary agreed to discuss the question with Mr. Malcolm on the understanding that all conversations were to be regarded as strictly personal between them and of a purely informal character.

6. The Administration's conviction that indiscriminate prospecting in native reserves was undesirable and Sekgoma's anxiety to terminate the Khama Concession were explained to Mr. Malcolm, and he was also reminded that the High Commissioner had been advised, and Sekgoma was aware, that the Khama Concession could be legally terminated after adequate notice had been served upon the Company. The Imperial Secretary suggested, however, that His Majesty's Government might be prepared to negotiate with a view to securing the liberation of the reserves from the incubus of the mining concessions by more gradual and less drastic methods which would give the Company a final chance to exercise "due diligence" in exploiting its mineral rights in the Protectorate and incidentally absolve the Crown from the charge of wishing, through mere caprice, to hold up the development of the country.

7. Certain general principles were suggested to Mr. Malcolm as a basis for negotiation and he was invited to submit, in writing, but quite informally, definite proposals. The following correspondence was subsequently exchanged between him and the Imperial Secretary:—

"Visiting Director's Office, Salisbury,
6th April, 1925.

Private.

MY DEAR CLIFFORD,

When we talked over the Bechuanaland Protectorate question in Cape Town you suggested that I might send you some notes which might, if you found yourself

* No. 44.

in agreement with them, form the basis of suggestions which the High Commissioner might put forward to the Colonial Office for the settlement of this question. I send you some notes accordingly and I think that an arrangement on these lines would afford a reasonable compromise on the questions which have been outstanding between us and the Imperial Government in regard to this matter. They would represent a considerable surrender on our part of the full measure of our rights; but at any rate they seem to me to afford a workable basis for getting mining development going in the Protectorate, and that is the important thing.

These notes are, of course, written 'without prejudice' and without consultation with my colleagues, who might perhaps think they were open to criticism; but for my own part if proposals on these lines were put forward I would do my best to get them accepted.

Yours, &c.,
D. O. MALCOLM."

"Imperial Secretary's Office, Cape Town,
29th April, 1925.

Private.

MY DEAR MALCOLM,

I have received your letter of the 6th April submitting a memorandum of proposals designed to enable the British South Africa Company to make more effective use of its concessions in the Bechuanaland Protectorate.

What I had in mind when we discussed the question at Muizenberg was that the High Commissioner might be prepared to recommend the promulgation of a Mining Law to facilitate prospecting in the Protectorate if the Company were prepared to surrender the indeterminate concession which it at present holds over the whole of Khama's country and to accept in place of it a concession which would confine the right of prospecting over the *whole* of the Bamangwato Reserve to a definite period at the expiration of which prospecting and mining operations would have to be confined to a specified area or areas.

As you are aware the Chief Sekgoma is opposed to prospecting in the Bamangwato Reserve, and it is very probable that he would be inclined to put obstacles in the way or even passively to resist any attempt to exploit the Khama Concession. Moreover, the terms of this particular concession are such that it would be very easy for a hostile chief to hamper prospecting by deliberately building roads or kraals in a vicinity where operations were being conducted.

The High Commissioner and the Imperial Government hold the view that native interests will suffer if prospecting operations are carried on indiscriminately all over a native reserve, indeed, it is considered that the very existence of mineral concessions over these areas is undesirable. At the same time the Administration would not, I think, wish capriciously to hold up mineral development throughout the Protectorate as its policy is inspired mainly by a scrupulous regard for native interests. I thought therefore that the Colonial Office might be prepared to consider the question of promulgating a mining law if the Company were ready (*a*) to accept such reasonable restrictions on prospecting operations as the Administration might, in the interests of the natives, feel obliged to impose; (*b*) to limit the period during which prospecting would be carried on over large areas, and (*c*) at the expiration of the prescribed period to select a specified area or areas in which to continue mining operations.

I had also suggested that the Company might be prepared to surrender certain concessions in native reserves in exchange for others over Crown lands.

No such proposals are, however, referred to in your letter or memorandum.

I have discussed the whole question with Sir Drummond Chaplin and I am transmitting this reply to you through him so that he may add his views in forwarding it to you. In conclusion I would wish to repeat my personal opinion, that I do not think either the High Commissioner or the Colonial Office desires capriciously to discourage mineral development in the territory. But there would be considerable opposition from the Administration and from some Chiefs to the existence of 'perpetual' concessions and the prosecution of indiscriminate prospecting in native reserves, and unless the Company is prepared to suggest restrictions on the lines indicated in this letter I do not think it would be worth while submitting any proposals to the Colonial Office.

There are a number of minor points in your memorandum, such as the division of the royalties accruing from mineral development in the Crown lands and the means suggested for compensating the Administration for any increases in the cost of Government which might result from any expansion in mining activity, which appear open to controversy, but no useful purpose could be served by debating them until the basic principles to which I have referred are decided. As an example I would mention that the existing Customs agreement with the Union accords the Protectorate a percentage of the total Customs revenue, and it is obvious that any local increase in imports would be unlikely to affect revenue derived from this source.

Yours, &c.,
B. E. H. CLIFFORD."

8. When Mr. Malcolm returned to Cape Town he and Sir Drummond Chaplin (recently appointed a Director of the Company) called on the Imperial Secretary to discuss the question and, if possible, to reach an informal understanding. The following general proposals were considered and the Imperial Secretary intimated that he would submit them to me:—

I. The Company to relinquish all " perpetual " concessions held by it and to accept in exchange mineral concessions over the same areas for a definite period (say 25 years), and at the expiration of that time to confine its mining operations to a selected area or areas. The Company's operations within the prescribed area or areas to be limited to a further definite period or for the duration of the life of a mine, whichever might be the longer. At the expiration of latter period the concession would lapse and surface rights revert to owners.

II. The Administration to issue a Mining Proclamation modelled on the Southern Rhodesian mining law to be applied to any specified area or areas from the date on which the first period of years referred to in I above commences.

III. The Crown to receive all "administrative" revenue provided for in the Proclamation such as fees for prospecting and claim licences, etc.

IV. The Crown to collect all royalties and to charge a commission of five per cent. for this service. (As in Southern Rhodesia.)

V. The Crown to retain its general powers of taxation and to exercise them to defray cost of administering the Proclamation or for other purposes.

VI. The Company to accept such reasonable restrictions on prospecting or mining operations as the Administration might, in the interests of the natives, feel obliged to impose.

VII. The Crown to take such further steps, not already provided for in law, as it may deem necessary to restrict or control the introduction of liquor, firearms, etc.

VIII. The Crown to agree, after the expiration of a period of (say ten) years or so soon as it may be possible to estimate the effect of the above arrangement upon the interests of the natives, to consider the advisability of granting new limited concessions in native reserves or of resuscitating for a short period concessions (such as the Moremi or Linchwe concessions) which have expired or been cancelled.

IX. The Crown to consider the expediency of throwing the Crown lands open to prospecting and, in the event of its deciding to do so, the Company to be compensated for the loss of its preferential rights with a proportion (say one-fifth) of the royalties accruing and a preferential right to acquire mining shares.

X. The rights of the Company to be safeguarded in the event of the Protectorate being transferred to the Union.

9. In the event of His Majesty's Government deciding to negotiate with the Company Mr. Malcolm and Sir Drummond Chaplin would support the above proposals as a foundation upon which a working agreement might be based. The period of 25 years referred to in I. was selected to agree with that during which the Crown lands along the Molopo may be placed at the disposal of the Imperial Cold Storage Company, and because it is estimated that native requirements in the matter of land will not become insistent for another generation. All fixed periods would, of course, be decided by the Secretary of State in negotiation with the Company.

10. The Company proposes as in Southern Rhodesia to collect a royalty of 5 per cent. of the output from mining operations carried on within the boundaries of its concessions.

11. Sections VIII and IX have, it will be observed, no binding effect on the Crown, and the financial and compensatory provisions would be decided by the Secretary of State in negotiation with the Company. It is understood that the existing rights of other companies are not prejudiced.

12. The above proposals do not pretend to do more than indicate very roughly the lines on which an agreement might be reached. They have been arrived at in the course of private and informal conversations and I forward them for your information.

I have, &c.,
ATHLONE.
High Commissioner.

Enclosure in No. 46.

MEMORANDUM BY MR. D. O. MALCOLM.

SUGGESTED LINES OF ARRANGEMENT IN REGARD TO THE BECHUANALAND PROTECTORATE.

LET us assume

(*a*) That the Crown is clearly under an honourable obligation to allow the British South Africa Company to make effective use of the concessions and rights in the Protectorate which it was actively encouraged by the Crown to obtain, and which it has acquired at great cost. See the Company's memorandum of 2nd January.*

(*b*) That where, as in the Protectorate, the natives show no sign of ever becoming peasant cultivators on their own account, as they are, e.g., in Uganda, or of undertaking any effective development of their territory for themselves, it is in their best interests that the investment of European capital should be encouraged and that they should thereby be given the opportunity of working for wages in the neighbourhood of their homes, and thus of raising themselves in the scale of civilization.

The principle has been clearly laid down of late by His Majesty's Ministers, and is stated or obviously implied over and over again in all that has been said or written by the present Under Secretary of State since his return from his recent mission to Africa. His mission did not include the Bechuanaland Protectorate, but the principle is no less applicable there than elsewhere.

The way to give effect to (*a*) and (*b*) above in regard to the Protectorate is to encourage prospecting and mining for precious and base minerals.

The appropriate steps would be to promulgate by Proclamation a mining law on the analogy of and modelled upon the Southern Rhodesia Mining Ordinance, to apply to all areas of the Protectorate open to prospecting. These areas would be:—

(i) Inside the native reserves, such areas as are covered by valid concessions of mining rights, approved by the Crown.

(ii) The Crown lands outside the reserves.

Within these areas anyone could prospect and mine on the same terms *mutatis mutandis* as he can in any part of South Rhodesia open to prospecting.

The royalties prescribed by the Proclamation would accrue to the owner of the mineral rights, i.e., under (i) above to the concessionaires, and under (ii) above to the Crown, but in this latter case as the Company has the preferential right to acquire the mining rights, which preferential right would be done away with by throwing the country open to prospecting and mining by anyone, it would be fair that the royalties should be shared between the Crown and the Company on some equitable basis, say "fifty-fifty."

The Crown should get all the administrative revenue provided for by the Proclamation, i.e., fees for prospecting licences, claim licences, etc., and should also, if it collected all royalties, as the Southern Rhodesia Government does and as it would probably be desirable that it should, keep five per cent. of them for the cost of

* No. 43.

collection as the Southern Rhodesia Government does. These receipts should suffice to pay for the cost of administering the Proclamation; but if the indirect effect of throwing open the country to prospecting and mining were to increase the necessary expenses of government faster than the revenue (which, however, would grow through increased customs receipts, etc.), the Crown has its general powers of taxation to fall back upon.

The Proclamation should impose any necessary restrictions on the importation of liquor, firearms, etc., into the Protectorate, unless this is sufficiently provided for already by the existing law.

The native Chiefs should be encouraged to grant proper and reasonable mineral concessions such as the Secretary of State could approve, where they have not already done so, the British South Africa Company having the preferential right to acquire such concessions. Areas covered by such new concessions could become areas open to prospecting under the Proclamation.

As to the particular areas where the British South Africa Company is interested as concessionaire:—

(i) The Bamangwato Reserve.—Sekgoma should be advised to live up to the agreement made by his father, Khama, with the British South Africa Company when he granted the Company its concession. If, notwithstanding, Sekgoma took any step to prevent the exercise of the Company's rights under the concession the Company would have to seek its legal remedy.

On a point of detail: In the Khama Concession an area within a radius of 30 miles from Palapye (which at the date of the grant of the Concession was Khama's headquarters) is reserved against prospecting. Khama's headquarters were afterwards moved to Serowe, where Sekgoma's now are. (See the following correspondence which passed between the Colonial Office and the British South Africa Company in 1909 and 1910.—Colonial Office to British South Africa Company 7th October, 1909*; Colonial Office to British South Africa Company 2nd November, 1909†; British South Africa Company to Colonial Office 7th February, 1910‡; Colonial Office to British South Africa Company 14th March, 1910.§)

The reasonable course would be that Sekgoma should be advised, if he wishes to do so, to amend the Concession by abolishing the reservation round Palapye and making a similar reservation round Serowe. If he did not wish to do so the reservation round Palapye would remain, while the general provision against interference with any "road, village, kraal or house, hut, etc." (clause 2 of the Concession), would, of course, apply to Serowe.

(ii) Bakhatla Reserve.—The rights which Linchwe granted to the Linchwe Concessions Company in 1923 should be confirmed. The new area of 100 square miles when marked out would become an area open to prospecting and mining under the Proclamation.

(iii) Batawana Reserve.—The extension of the Concession granted by Mathibe to 28th August, 1929, should be confirmed. The area covered by the Concession would become an area open to prospecting and mining during the lifetime of the Concession.

(iv) Bakwena Reserve.—The 100 square mile area when marked out would become an area open to prospecting and mining.

(v) Bakwena, Bangwakatsi and Bamalete Reserves.—The Company might continue to pay the voluntary allowances to the Chiefs in these areas in consideration of an arrangement on the lines of the foregoing regarding mining rights, otherwise it can hardly be expected to go on paying voluntary allowances for nothing.

In further consideration of an arrangement on the foregoing lines regarding minerals the British South Africa Company might be asked to give up its preferential rights to the surface of the Crown lands outside the native reserves altogether, though this would be giving up part of its admitted rights in consideration of the remainder of its admitted rights being made effective, which in any case they ought to be.

It is true that in so far as the Company's rights to acquire the surface of Crown lands are preferential as against other Europeans the surrender of them is not a concession of much value to the Crown because if the Crown is disposed to alienate

* No. 210 in African (South) No. 932. † 33850/09: not printed. ‡ No. 15 in African (South) No. 948. § No. 24 in African (South) No. 948.

an area of land, and has an offer for it, it can get its price from the British South Africa Company if the Company is willing to give the price offered, or, failing that, from the person who has made the offer. But the Concession would be of considerable value to the Crown in the not impossible event of the Crown wishing to accommodate with land in the Protectorate non-Europeans other than natives of the Protectorate, c.f., the case of Simon Cooper and his followers some 15 or 20 years ago.

58367

No. 47.

THE HIGH COMMISSIONER to THE SECRETARY OF STATE.

(Received 30th December, 1925.)

(Confidential.)

SIR, High Commissioner's Office, Pretoria, 8th December, 1925.

WITH reference to my despatch Confidential (6) of the 4th April, 1924,* and connected correspondence, I have the honour to transmit herewith, for your information, a copy of a despatch from the Resident Commissioner of the Bechuanaland Protectorate reporting that a representative of the Balkis Company, Limited, is now prospecting in the Bamalete Reserve.

I have, &c.,
ATHLONE,
High Commissioner.

Enclosure in No. 47.

(Confidential.)
(H.C. 497.)

MY LORD, Resident Commissioner's Office, Mafeking,
3rd December, 1925.

IN continuation of my Confidential despatch of the 29th March, 1924,† and previous correspondence, on the subject of the Gaseitsiwe and Kanye Concessions and the right, or otherwise, of the Balkis Company, Limited, to grant licences thereunder to prospect for minerals and precious stones within the Bamalete Reserve, I have the honour to inform Your Excellency that a Mr. James Ennis, a representative of the Balkis Company, Limited, is now prospecting in that Reserve, and that I am advised that several samples of minerals from that area have been forwarded to Johannesburg for purposes of assay.

I have, &c.,
J. ELLENBERGER,
Resident Commissioner.

D. 1109

No. 48.

THE HIGH COMMISSIONER to THE SECRETARY OF STATE.

(Received 1st February, 1926.)

[*Answered by No.* 49.]

(Confidential.)

SIR, High Commissioner's Office, Cape Town, 13th January, 1926.

WITH reference to my Confidential despatch of the 8th December,‡ I have the honour to transmit herewith a copy of a despatch from the Resident Commissioner of the Bechuanaland Protectorate respecting a licence granted by the representative of Balkis, Limited, purporting to authorize Mr. R. Rowland to prospect for minerals "in the area of the concessions known as the Bangwaketsi and Kanye Mineral Concessions."

2. You will observe that the Resident Commissioner proposes to advise the Chief of the Bamalete to inform Mr. Rowland that the Concessions held by the Balkis Company do not confer a right to prospect or carry on mining operations in the Bamalete Reserve, but before authorizing him to do so I should be glad to receive

* No. 27. † Enclosure in No. 27. ‡ No. 47.

your instructions. In this connexion I may refer to my predecessor's Confidential despatch of the 31st August, 1923.*

I have, &c.,
ATHLONE,
High Commissioner.

Enclosure in No. 48.

(HC. 529.)
(Confidential.)

Resident Commissioner's Office, Mafeking.
15th December, 1925.

My Lord,

I have the honour to refer to your despatch No. 1875, Confidential, of the 8th December,† and previous correspondence regarding the right or otherwise of the Balkis Company, Limited, to prospect in the Bamalete Reserve, and to enclose herewith, for Your Excellency's information, a copy of a letter addressed to Seboko, Chief of the Bamalete, by Mr. R. Rowland, a trader of Kanye in the Ngwaketse Reserve.

2. I also enclose the licence issued by the Balkis Company to Mr. Rowland, under which the latter claims the right to prospect in the Bamalete Reserve. I should be glad if Your Excellency would cause this document to be returned to me in due course.

3. In this connexion I would refer Your Excellency to the memorandum which accompanied Sir James Macgregor's Confidential despatch of the 21st August, 1923,‡ and, in view of the facts set forth in paragraphs 5 to 9 inclusive of that Memorandum, I propose, subject to Your Excellency's concurrence, to tell the Chief Seboko, who is asking for advice, to inform Mr. Rowland that he does not admit that the Concessions held by the Balkis Company, Limited, comprise the right to carry on any mining operations, or even to prospect within the Bamalete Reserve.

I have, &c.,
J. Ellenberger,
Resident Commissioner.

Kanye, Bechuanaland Protectorate,
3rd December, 1925.

Chief Seboko,
Ramoutsa.

Dear Chief,

Greetings.

I am sending my men Masere and Marumu to go thro' your country and bring me specimens of any reefs existing in your country and I enclose my right to such action.

I hope you will do your best to assist them and prevent any interference on the part of your people.

With greetings, Chief, I am, &c.,
R. Rowland.

(1/- stamp.)

Balkis, Limited.

Registered Office: 274, Gresham House, Old Broad Street, London, E.C.

Licence to Prospect in the area of the Concessions known as the Bangwaketsi and Kanye Mineral Concessions in the Bechuanaland Protectorate, comprising the whole of the Chief Seepa Pitso's Country, and including that portion of the country belonging to the British South Africa Company which extends westwards for about six miles from the Transvaal border and is traversed by the Rhodesian Railway from a point near Pitsani at the south-west to a point near Crocodile Pools on the north-east,

Granted to R. Rowland,
of Kanye, (hereinafter described as the "Prospector") subject to the terms and conditions following:—

1. The fee payable for this Licence shall be the sum of Five shillings.

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* No. 17. † Not printed. ‡ Enclosure 2 in No. 17.

2. The Prospector shall for the period of 12 months from the 1st day of June, One Thousand Nine Hundred and Twenty-five, have the right to search and prospect for minerals and metals of all kinds, diamonds and other precious stones, coal and oil, in the whole area of the said Concessions, except in any road or within two hundred yards of any village, kraal, house or hut, or upon any land under cultivation or required for the purpose of irrigation.

3. The Prospector shall in addition to the general right to prospect hereby granted have the right to select an area measuring 2,000 feet long by 2,000 feet wide or two areas which together do not exceed such dimensions, and in the event of such selection shall have the exclusive right to search and prospect on the said area or areas during the term of this Licence, always provided that he shall first peg out the said area or areas and obtain a Certificate of Registration from the Company's Agent. The fee for such Certificate shall be the sum of Ten shillings for each area selected.

4. On making any discovery or discoveries the Prospector shall be entitled to peg out:—

Five Alluvial Claims in one block, each measuring 200 feet by 200 feet.

Twenty claims in one block for precious metals, each claim measuring 150 feet along the strike of the reef and 600 feet across, but so as not to exceed 1,500 feet along the strike.

Twenty Claims in one block for diamonds or other precious stones, each claim measuring 30 feet by 30 feet.

Thirty Claims in one block for base metals and non-metallic minerals, each claim measuring 150 feet along the strike of the lode and 600 feet across, but so as not to exceed 1,500 feet along the strike, and

An area not exceeding 640 acres for coal or oil.

5. In respect of each block of claims pegged out the Prospector shall forthwith apply to the Company's Licence Agent for a Certificate of Registration, and shall pay the sum of £2 for the same, and except during the first twelve months he shall pay to the Company or its agent the sum of two shillings and sixpence per claim per month for metals and precious stones, and two shillings and sixpence per 100 acres per month for coal or oil.

6. For a period of twelve months after the date of registration of a block of claims, as provided for in Clause 5 hereof, the Prospector shall not be required to execute any development work, but thereafter at least 60 feet of development work shall be executed on each block of claims during every succeeding twelve months.

7. The Prospector shall be entitled to import into the territory of Seepa Pitso free of duty, all plant and machinery required for mining purposes as well as materials of all kinds, provisions and clothing.

8. The Prospector shall be entitled to such wood and water as may be necessary for the proper working of any claims pegged out by him, the cost of all labour and cartage being borne by him.

9. The following Royalties shall be payable to the Company by the Prospector, his successors and assigns:—

(*a*) On the output of gold or silver, 5 per cent.

(*b*) On the output of base metals and non-metallic minerals, 4 per cent.

(*c*) On the output of diamonds or other precious stones, 10 per cent.

(*d*) On the output of coal brought to surface, 5 per cent.

(*e*) On the output of oil brought to surface, 5 per cent.

10. This Licence is granted subject to any Mining Laws which are now or may hereafter be enacted by the British Government or any Government Authority having power for that purpose.

Issued at Johannesburg this 15th day of June, 1925.
Signed, D. P. C. Blair,

Agent for the issue of Prospecting Licences on behalf of Balkis, Limited, 1, Sauer's Buildings, P.O. Box 1917, Loveday Street, Johannesburg.

Countersigned by the Prospector, R. Rowland.

D. 1109

No. 49.

THE SECRETARY OF STATE to THE HIGH COMMISSIONER.

[*Answered by No. 59.*]]

(Confidential.)

Downing Street, 3rd March, 1926.

MY LORD,

I HAVE the honour to acknowledge the receipt of your Confidential despatch of the 13th January* regarding a licence issued by the Balkis Company, Limited, to Mr. R. Rowland under which the latter claims the right to prospect in the Bamalete Reserve, and to inform you that the general question of the mineral concessions held in the Bechuanaland Protectorate is receiving careful consideration, but that, in view of the facts set out in the accompanying extract from a departmental memorandum prepared in November, 1924, I feel some doubt whether the position with regard to the Balkis Company's rights is sufficiently clear to justify the Chief of the Bamalete being recommended to inform Mr. Rowland in the sense proposed in your despatch.

2. I should be glad to receive any further observations which you may have to make after considering the facts set out in the enclosed memorandum.

I have, &c.,

L. S. AMERY.

[48368]

Enclosure in No. 49.

MINERAL CONCESSIONS IN THE BAMALETE RESERVE.

(Extract.)

* * * * * * *

THE concessions which have been referred to above as held by the Balkis Company are two concessions dated 13th October, 1887, and 29th March, 1888, originally granted to different parties by Gaseitsiwe, Chief of the Bangwaketsi. The concessions,† which are in practically similar terms, grant the right to prospect for precious stones and minerals throughout the Chief's territory in consideration of a payment of 5s. per month; and also, in consideration of certain further payments which become payable on selection of a mining area, the right to search for and win precious stones and minerals in one or more areas not to exceed in the aggregate 400 square miles.

The total area which may be marked off by the present holder of both concessions therefore amounts to 800 square miles. No area for mining purposes has yet been selected, but the Balkis Company have been paying the Chief for some years the sum of £120 per annum in respect of the two concessions, though strictly speaking the only payment which can be claimed under each is that of 5s. a month.

The following chronological survey of the events in connexion with these concessions is given with a view to elucidating the present position :—

1885. In December of this year Lieutenant Bethell of the British Bechuanaland Police was instructed by the Administrator of British Bechuanaland‡ to advise the Chief Gaseitsiwe to allow the Border Chief Magosi of the Bamalete to take up his residence and to occupy within Gaseitsiwe's country a sufficient location for all Magosi's people, "including those now in the Transvaal." Magosi was at the same time to be informed that he must either return and live entirely in the Transvaal, having no claim on British protection, or else live as a subject of Gaseitsiwe, bound to pay moderate and reasonable tribute and otherwise obey Gaseitsiwe in all things lawful. As a result of these instructions treaties were signed on the 25th and 26th December, 1885, between Gaseitsiwe and Magosi by which the former engaged to rent the latter and his successors as Chief a piece of ground sufficient for the ordinary requirements of the tribe. The conditions of tenure by Magosi and his successors were to be (1) that they pay Gaseitsiwe an annual rent of ten head of cattle, (2) that they recognize Gaseitsiwe as Paramount Chief, they retaining the right of jurisdiction in all matters immediately connected with their tribe, the Bamalete, (3) that they abide within such boundaries of the territory assigned to them as may be from time to time mutually arranged.

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* No. 48. † For Concession of 1888, see African (South) No. 537, page 89.

‡ See pp. 248-251 C.4643.

The treaty was signed on behalf of Magosi, who was a very old man, by Ikaning, his immediate successor.

1887. The Blue Book C. 5070 (pages 83-84) contains a report and sketch made in April, 1887, of the boundary between the countries of the Chiefs Sechele and Gaseitsiwe which is interesting as showing that at that date Gaseitsiwe's territory was recognized as extending up to the Transvaal boundary.

On the 13th October, 1887, the first Gaseitsiwe Concession was granted.

1888. On the 27th March, 1888, a Government Notice was issued by the Administrator of British Bechuanaland stating, *inter alia*, that no chiefs had any right or power to grant permissions to prospect, mining leases or mineral concessions, except Gaseitsiwe, Chief of the Bangwaketsi and certain others; and in particular that alleged permits to prospect, dig for and win precious stones and minerals, purporting to be issued by the minor Chief Ikaning will be invalid and will not be recognized by His Majesty's Government except in so far as they may have been ratified and confirmed by Gaseitsiwe, with the assent of His Majesty's Government.

On the 29th March, 1888, the second Gaseitsiwe Concession was granted.

In July, 1888, Mr. Moffat, Assistant Commissioner in the Bechuanaland Protectorate, forwarded a report of a meeting with Ikaning and representatives of the Bangwaketsi,* from which it appeared that the former was objecting to the payment of the tribute. The question of concessions was also raised and Mr. Moffat reported that he had stated that on no consideration whatever would Ikaning be allowed to grant concessions in the country which he occupied. Mr. Moffat in forwarding his report asked two questions :—

(*a*) Are we to insist on Ikaning paying the ten head of cattle yearly or not?

(*b*) Are we to allow persons to whom Gaseitsiwe has granted leave to prospect to come and dig where Magosi's people are occupying the country?

On these points the High Commissioner replied :—

(*a*) The agreement signed by Ikaning secured for him valuable consideration in allowing him the peaceful tenancy of a portion of Gaseitsiwe's country and having enjoyed that consideration he cannot now repudiate the payment which he agreed to make for it.

(*b*) That Gaseitsiwe should not issue prospecting licences for any portion of the country leased to Ikaning without that Chief's consent and that Gaseitsiwe should be so informed.

The two mineral concessions at present in question had of course already been granted at this date.

1893. Early in this year a Commission was appointed to inquire into the concessions claimed by Europeans in the Protectorate. The following extracts from the Instructions to the Commission may be quoted† :—

> "6. If a paramount Chief has made an alleged grant or concession of the land or rights of a petty Chief over whom he exercises merely a nominal sovereignty without receiving tribute, such grant or concession should be regarded as invalid without the concurrence of the petty Chief.
>
> 7. If a petty Chief, paying tribute to a paramount Chief, has made a grant of land, or gives a concession of mineral or other rights in land which he merely occupies on sufference or by the permission of such paramount Chief, such grant or concession should be considered to be invalid without the consent of the paramount Chief."

The report‡ of the Commission was issued in August, 1893. With regard to the two Gaseitsiwe mineral concessions they reported that these had already been recognized by His Majesty's Government. The Commission also reported on certain concessions purported to be granted by Ikaning. With regard to these they reported that much evidence was had as to the paramountcy of Bathoen (the successor of Gaseitsiwe) over Ikaning, the contention of the claimants being that the latter chief had long since thrown off his allegiance and that Bathoen was either unable or unwilling to exercise any rights which he might consider that he had over the country occupied by the Bamalete. The Commission considered however that it was unnecessary to enter into this question, as it was clear that Ikaning did not understand the terms of the Concessions, nor did he consult his headmen or people before granting them. These Concessions were therefore rejected.

1895. In 1895 the Chiefs Khama, Sebele and Bathoen visited England to interview the Secretary of State (Mr. Chamberlain) with regard to the future of the

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* C.5524, pp. 41-42. † African (South) No. 537, p. 3. ‡ African (South) No. 537, pp. 6-21.

Protectorate. The main object which Mr. Chamberlain had in view was to arrange for the construction of the railway through the Protectorate and to inform the Chiefs of the proposal, then contemplated, for the administration of the territory outside the Chiefs' areas by the British South Africa Company. In the meantime Mr. Rhodes applied, in September, 1895, for the separate transfer of Ikaning's territory to the Company,* and in correspondence on this point the question whether Bathoen's consent was necessary was considered. In commenting on this point the Imperial Secretary observed that "by the Government Notice of the 27th March, 1888, Bathoen's paramountcy was recognized in respect of mineral concessions and looking to the terms of that Notice, as well as to the Treaty of 26th December, 1886, it is clear that there is evidence of a *de jure* paramountcy." Mr. Chamberlain telegraphing later to the High Commissioner in October, 1895,† observed that his own view was that since Ikaning was willing, the jurisdiction over his territory could be ceded to the British South Africa Company without consulting Bathoen, "who, although Paramount Chief, does not in fact exercise jurisdiction in Ikaning's country, but the latter will remain subject to a disability to grant concessions without Bathoen's consent." (A Proclamation so transferring the jurisdiction was issued in October, 1895, but repealed in the following year after the Jameson raid.)

As a result of the discussions with the three Chiefs in England, each agreed to surrender certain parts of their former territories which adjoined the Transvaal; and their reserves were subsequently defined by a Proclamation issued in 1899. The area assigned to the Bangwaketsi excluded the territory occupied by the Bamalete and also a strip of land which was held on lease by the British South Africa Company under another concession granted by Bathoen and which was subsequently granted to the British South Africa Company by Proclamation No. 4 of 1905. This area is known as the Lobatsi Block.

1902. In December, 1902, the question was raised by the Resident Commissioner of the Bechuanaland Protectorate whether the Balkis Company, as holder of the Gaseitsiwe mineral concession, had the right to grant prospecting rights to a Mr. Winmill in the country outside the Bangwaketsi Reserve and between its eastern border and the Transvaal.‡ The High Commissioner (Lord Milner) in his reply said that "Considering the obstacles which have previously been put in the way of these concessionaires by a mistake which does not appear to have been altogether removed, Mr. Winmill should be made clearly to understand that the Government of the Protectorate has no objection to his prospecting under the terms of the two concessions under which he claims and over the whole extent of country covered by those concessions, subject of course to the laws which are now or may hereafter be put in force in the Protectorate." From correspondence which took place in the following year§ it appeared that the British South Africa Company also recognized the rights under these concessions.

1909. In this year by Proclamation No. 28 of November, 1909, the boundaries of the Bamalete Reserve were eventually defined.

It would appear on the above review of the facts very difficult to rule that the rights given by the Gaseitsiwe Concessions do not extend to the Bamalete Reserve and the High Commissioner has pointed out that a ruling adverse to the claims of the Balkis Company and Mr. van den Heever might give rise to litigation.

D. 2993

No. 50.

MESSRS. BALKIS, LIMITED, to DOMINIONS OFFICE.

[*Answered by No.* 52.]

(L/106.)

274, Gresham House, Old Broad Street, London, E.C.2.

Sir, 16th March, 1926.

Bechuanaland Protectorate, South Africa.

We hold Prospecting and Mining Rights over the Bangwaketsi Reserve forming a portion of the Bechuanaland Protectorate, as indicated by the plan‖ of which we beg to enclose a copy herewith.

* No. 18 in C.7962. † No. 27 in C.7962. ‡ African (South) No. 717, pp. 41-43.
§ No. 380 in African (South) No. 717. ‖ Not reproduced.

For some months past our representative has been investigating various portions of the Concessions and in the course of his operations has approached the southern boundary of such Concessions abutting upon Imperial Crown Lands.

You will see by the plan that a portion of the Imperial Crown Lands has been roughly etched in blue. This area adjoins on the west the land granted to the Imperial Cold Storage Co., Ltd., and on the east Baralong Lands which are under the control of the British South Africa Company.

Our representative advises that it would be useful if he could extend his investigations into the lands controlled by the Imperial Government, etched in blue as mentioned above, and we should feel much obliged if you would kindly consider whether an arrangement could be made by which we could obtain prospecting and mining rights over the area in question.

I should be glad to hear from you in due course and a representative will be happy to call upon you to give you any information in his power.

I am, &c.,
W. J. HEARN,
Secretary.

D. 2993

No. 51.

THE SECRETARY OF STATE to THE HIGH COMMISSIONER.

[*Answered by No.* 59.]

(No. 108.)

My Lord, Downing Street, 30th March, 1926.

I have the honour to transmit to you the accompanying copy of correspondence* with Messrs. Balkis, Limited, relative to an application made by them for the grant of prospecting and mining rights in certain Crown lands in the Bechuanaland Protectorate.

2. I should be glad to be informed how you would view the application for mining rights in this particular area, if an arrangement should be arrived at with the British South Africa Company as regards their preferential rights.

I have, &c.,
L. S. AMERY.

D. 2993

No. 52.

DOMINIONS OFFICE to MESSRS. BALKIS, LIMITED.

Sir, Downing Street, 30th March, 1926.

In reply to your letter of the 16th March,† I am directed by Mr. Secretary Amery to inform you that he is not in a position at present to consider any arrangement for the grant of prospecting or mining rights in the Crown lands in the Bechuanaland Protectorate, but that your application is being communicated to the High Commissioner for South Africa.

I am, &c.,
A. C. C. PARKINSON.

D. 3622

No. 53.

THE SECRETARY OF STATE to THE HIGH COMMISSIONER.

(Sent 12.50 p.m., 22nd April, 1926.)

Telegram.

[*Answered by No.* 58.]

22nd April. Confidential one. Your despatch 5th June, Confidential No. 2.‡ General question of mineral concessions in Bechuanaland Protectorate has been receiving careful consideration and proposals outlined in paragraph 8 of your despatch have now been discussed with Company. As result of this discussion following tentative suggestions have been put forward.

* Nos. 50 and 52. † No. 50. ‡ No. 46.

As regards Head I of proposals in your despatch, it is understood that intention of Scheme proposed is that prospecting should cease at end of 25 years and that after that period Company would have no mining rights except in such parts of areas in question as are proved to be mineralized. It is clear, however, that, if future controversy is to be avoided, some automatic arrangement is required for determining limits in which mining rights would continue to be exercised after the 25 years. Company's view is that after the 25 years, mining rights should be limited to such mining locations as had been pegged out and were still registered and in existence at end of 25 years period, and that these locations should be left in being without any time limit.

This arrangement is subject to understanding that a Proclamation to regulate mining in areas in question and capable of application to other areas in Protectorate would be issued on lines of Rhodesian Mining Law. Company would now prefer Northern Rhodesia model to Southern Rhodesia form of law, subject to condition that the law would as in Southern Rhodesia provide for a definite scale of royalties which would be collected by Administration and paid to Company or other owner of mining rights where the Company does not own them subject to 5 per cent. commission. Company explain with regard to this point that it would be an advantage to them not to have to set up local office for collection of royalties, and that all they would expect would be that the Government would exercise as much diligence in collecting the royalties as it does in collecting its own revenues and that there was no question of holding the Government responsible for defaults. Prospecting licences to individual prospectors would be issued by the Administration, but Company anxious that system of special grants should be authorized as in Rhodesia. If special grants are made, these would be issued by Administration in Crown lands only; elsewhere they would be issued by owner of mining rights (e.g., in Bamangwato Reserve by Company) but subject to (*a*) approval of High Commissioner, and (*b*) payment of royalties at standard rates.

No difficulty is seen with regard to Heads V to VIII of proposals in your despatch. As regards Head IX, it is thought that all that is required is arrangement that Company should have a proportion of revenue accruing to Crown as owner of mineral rights in Crown lands, as distinct from revenue received by way of administrative fees. Company feel, however, the proportion of one-fifth proposed is somewhat small. Proposed arrangement would leave Administration free to make special grants in Crown lands without reference to Company provided that rates of royalty to be prescribed in proposed Mining Proclamation were respected. As regards Head X, Company realize that they cannot ask more than that in any negotiations with Union Government for transfer of Protectorate. His Majesty's Government should obtain an acknowledgment from Union Government that they recognized rights of Company then existing.

Question of present form of Khama Concession has also been discussed with Company, and it was pointed out that one of main fears of natives was possibility of interference with their grazing grounds through mining operations. Company consider that judging from experience in Northern Rhodesia there seems no likelihood of this, but they would be prepared to consider any proposals Administration might wish to put forward in order to remove apprehensions of natives on this point or with regard to provisions in Concession relating to timber, and also to consider question of arranging to pay for benefit of natives some proportion of royalties received by Company, in addition to £300 per annum at present paid to the Chief. It is understood by Company that it might be necessary to prohibit importation of native labour from outside Reserve for general mining work but Company presume this would not prevent introduction by prospectors of a few individual natives from Southern Rhodesia where necessary.

I should be glad if you would consider in consultation with Resident Commissioner of Bechuanaland Protectorate whether proposals outlined would form suitable basis for further detailed discussion in South Africa with Company's representatives and let me have your views as soon as possible.—AMERY.

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D. 3622

No. 54.

THE SECRETARY OF STATE to THE HIGH COMMISSIONER.

(Sent 1.35 p.m., 22nd April, 1926.)

TELEGRAM.

[*Answered by No.* 58.]

22ND APRIL. Confidential No. 2. My telegram of to-day, Confidential number one,* is based on personal discussion with Malcolm. He has seen draft, agrees that it correctly sets out upshot of conversation, and asks that it may be despatched to you. He adds however that what took place at conversation has not yet been before Board and that he cannot therefore commit Company to agreement such as has been discussed. At same time he thinks that it is all to the good that you should proceed as indicated in last paragraph of telegram. In the circumstances Malcolm has been informed that I must equally be regarded as not committed to an agreement on lines indicated. Please communicate copy of my Confidential telegram number one* to Chaplin in order that Chaplin may be in a position to let Company have his views.—AMERY.

D. 3622

No. 55.

THE SECRETARY OF STATE to THE HIGH COMMISSIONER.

(Sent 2.20 p.m., 22nd April, 1926.)

TELEGRAM.

SECRET. My two telegrams of to-day† regarding mineral concessions in Bechuanaland Protectorate. I should like to add following further observations for your guidance in discussion with Resident Commissioner, but not of course for communication to Chaplin. When matter was discussed with Imperial Secretary in London it was decided that it would be advisable to obtain view of Law Officers on Mr. Feetham's opinion as to terminability of Khama Concession. Steps were taken accordingly but Law Officer's report has not yet been received. In meantime past correspondence with British South Africa Company has been carefully reviewed and I have come to conclusion that even if the Concession is so worded as to give the Chief the legal right to terminate at will, it would not be at all consistent with previous history of the matter that the right should in fact be exercised. Such action would be incompatible with representations made to Khama in 1903 (see African 717, pages 255 and 387) and with attitude taken up with Company in 1903 and 1909 (see African 717, page 259 and African 932, page 280). We should thus be morally bound, even if concession were terminable and terminated, to do our best to secure new concession for Company. It is of course realized that communication to natives of advice that concession is terminable will add to difficulty of arranging satisfactory settlement with them, but discussion with Malcolm has proceeded on basis that this should not be impossible if present concession is suitably modified. Gather that proposal in Head I of paragraph 8 of your Confidential despatch No. 2 of 5th June‡ was put forward from same point of view. You will observe that suggestion is that Company in addition to agreeing to limitation of prospecting to 25 years should be prepared to entertain proposals for reconsideration of provisions of present Concession in regard to taking of land and timber for mining purposes and also to pay a proportion of the royalties for the benefit of the natives of the reserve. As regards latter proposal there can be no doubt that present payment of £300 per annum made to the Chief would be very inadequate if paying minerals should be discovered on any large scale, and though I do not contemplate that further personal payments should be made to the Chief it seems reasonable that the Company should hand over a percentage of their proceeds to the High Commissioner for the general benefit of the natives of the reserve. Further point in existing Concession which requires consideration is provision relating to importation free of duty, and it will presumably be necessary also to substitute

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* No. 53. † Nos. 53 and 54. ‡ No. 46.

Serowe for Palapye in Clause 1. As regards use of timber and other ancillary rights I think that Company should be satisfied if these were governed by terms of Mining Proclamation on lines of Northern Rhodesia law, but special safeguards may be necessary to allay apprehensions of natives as to possible interference with grazing grounds. As regards proposal that locations in existence at end of period of 25 years should remain in being, question of imposing some time-limit has been considered, but any such limit would have to be for so long a period that it is felt that apprehensions on part of natives might be unnecessarily aroused by insertion of such a provision.

In view of the fact that other concessionaires besides the British South Africa Company are involved, it may be necessary in first place to apply proposed Proclamation merely to Crown lands and the Bamangwato Reserve and such of the other areas in which the Company are interested as can be dealt with on promulgation. In this connexion please note that I accept view that Company must be recognized as holding mineral rights in European blocks (see your Confidential despatch of 30th August, 1923*) subject to rights of Balkis Company in Lobatsi Block. We could not apply proposed legislation to areas where rights are held by other Companies (e.g., Tati Company and Balkis Company) without consultation with Companies concerned and in its application to these areas various modifications may be necessary. In the case of Crown lands question of legislation should not involve any special difficulty if proposed arrangement under which Company would abandon preferential rights for proportion of Crown revenue is adopted.

I have also considered possibility that prospecting might be allowed in Bamangwato reserve in advance of issue of Mining Proclamation. Should be glad to have your views on this point, but as now advised it seems to me that as Company contemplate open prospecting at any rate at first this might be difficult. Conditions on which such prospecting should be carried on would have to be defined much more precisely than if prospecting were being conducted by substantial mining Company and it looks therefore as if drafting of Proclamation would have to be expedited as far as possible.

In the course of discussions with Malcolm he has emphasized desire that proposed Proclamation should provide for making of special grants in accordance with Company's usual procedure in Northern Rhodesia, and I am sending by despatch† copy of form of special grant recently made by Company in that Territory. Usual form of special grant in Northern Rhodesia gives exclusive rights to prospect for period of years over a specified area but prospectors already working in the area are allowed a few months within which to peg off locations if they have found minerals. British South Africa Company as a condition of making special grant receive shares in Company concerned and require expenditure of definite sum of money on development.

There would I think be advantages in providing for possibility of making special grants since it would be easier to control operations of prospectors who were working in employment of reputable Companies and a better class of prospector would probably be obtained.—AMERY.

D. 3622

No. 56.

THE SECRETARY OF STATE to THE HIGH COMMISSIONER.

(Confidential.)

MY LORD, Downing Street, 22nd April, 1926.

WITH reference to my two Confidential telegrams of 22nd April,‡ I have the honour to transmit to you documents relating to the special grant made by the British South Africa Company to Rhodesia Minerals Concession, Limited, being an Agreement,§ dated the 25th November, 1925 (which constitutes the special grant), and the Notices§ issued in the *Northern Rhodesia Government Gazette*.

I have, &c.,
L. S. AMERY.

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* 46150/23: not printed. † No. 56. ‡ Nos. 53 and 54. § Not reprinted.

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D. 4682

No. 57.

THE SECRETARY OF STATE to THE HIGH COMMISSIONER.

(Sent 3.10 p.m., 29th April, 1926.)

TELEGRAM.

29TH APRIL. Confidential. My telegram 22nd April Confidential 2.* Now informed by Malcolm that proposals outlined my telegram 22nd April Confidential 1† would be satisfactory to British South Africa Company as a basis of further detailed discussion if acceptable also to me for that purpose.—AMERY.

D. 6336

No. 58.

THE HIGH COMMISSIONER to THE SECRETARY OF STATE.

(Received 14th June, 1926.)

(Confidential.)

SIR, High Commissioner's Office, Cape Town, 27th May, 1926.

I HAVE the honour to acknowledge the receipt of your telegrams of the 22nd April‡ outlining a scheme to enable the Chartered Company to exploit with as little delay as possible its mining rights in the Bechuanaland Protectorate and more particularly those which it holds in the Bamangwato Reserve.

2. I enclose herewith a copy of a despatch from the Resident Commissioner submitting his observations, and after consultation with Colonel Ellenberger and Sir Drummond Chaplin I submit for your consideration the following scheme.

3. As suggested in Head I of the proposals outlined in my despatch Confidential of 5th June, 1925,§ prospecting over the whole of the Bamangwato Reserve should cease twenty-five years after the issue of a Mining Proclamation for the Protectorate and that after the expiration of that period no mining will be allowed except within areas which at that date are registered as Mining Locations.

4. It will be necessary in the first place to amend the Khama Concession, which was signed at Palapye Road on the 25th July, 1893, which appears on page 76 of the White Book, African (South) No. 454. I consider that only essential amendments and additions should be made to this contract, as any radical alterations of its terms might arouse the suspicions of the Chiefs and people of the Mangwato tribe. I accordingly suggest that the British South Africa Company should be approached with a view to obtaining their consent to the proposed amendments in the 1893 Agreement. I attach a copy of the Agreement; the passages which it is desirable to omit are enclosed in brackets and the proposed additions have been underlined in red ink. I have not consulted my Legal Adviser regarding the wording of the revised Agreement and it is probable that alterations in phraseology will be necessary.

5. A copy of this revised Agreement was shown to Sir Drummond Chaplin who stated that, generally, he was prepared to accept the amendments that had been made to the original document. He asked whether the present Bamangwato Reserve represented the extent of the Chief's country at the time of the signing of the Concession. It was explained to him that poesibly at that time the Chief may have claimed to exercise a vague suzerainty or hunting rights over a larger area, but when the Protectorate Chiefs visited England in 1895 they agreed to abandon any claim to ownership of land outside the boundaries of their Reserves as fixed on the occasion of that visit. There were other lands over which it would appear that they did not possess rights by virtue of permanent occupation or other substantial usage which were subsequently declared to be Crown lands. In those days expeditions by the various Chiefs were conducted into lands not permanently occupied by any special tribe for hunting or cattle-lifting purposes and filibustering expeditions across the recognized borders of neighbouring Chiefs were of frequent occurrence. It was necessary, therefore, to prescribe definite boundaries, and I consider that for the purpose of the proposed mining law definite boundaries are essential. It was accordingly pointed out to Sir Drummond Chaplin that the High Commissioner felt compelled to insist upon a definite area comprised in the term "Bamangwato Reserve"

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* No. 54. † No. 53. ‡ Nos. 53 and 54. § No. 46.

being substituted for the term "territory of which he is the Chief" because the former was clearly demarcated, whereas the latter could not now be identified either by the Government, the Chiefs or the Company.

6. Sir Drummond then raised the question of the excision of the words "free of duty." It was explained that the Chief was not competent to grant any rebate of customs duty and that there were no customs barriers between the Union and the Protectorate and no customs department in the Protectorate Administration. The inclusion of the phrase "free of duty" was therefore quite impracticable from the Government's point of view. Sir Drummond subsequently addressed the following letter on the subject to the Imperial Secretary:—

"22nd January, 1926.

With reference to our discussion yesterday about the proposed Agreement regarding minerals in the Protectorate, I find that the Union tariff as regards mining machinery imported into the Union is minimum, nil, maximum 3 per cent. *ad valorem*. In Rhodesia I think it comes in free. How would it be to provide in the revised concession that the duty shall not exceed the duty now charged in the Union or Rhodesia?

I find that at present in Southern Rhodesia the Government makes loans both to prospectors and small workers, the amount now outstanding being, as regards prospectors, £2,429 and as regards small workers £20,819. A further £5,000 is provided in this year's Estimates. I don't suggest that the Protectorate Administration should provide similar assistance but I think the policy of the Southern Rhodesia Government gives support to the contention that if you want to push on mining you must make conditions easy for prospectors, and for mining people in the early stages of their activities. When they are making profits the Administration can take its share.

Yours, &c.,
Drummond Chaplin."

7. As it is not likely that the existing Customs Agreement with the Union will be superseded, at any rate during the next twenty-five years, I have no objection to Sir Drummond's proposal. He might have argued, but the point does not seem to have occurred to him, that as the Imperial Government approved the Concession the "free of duty" stipulation must also have been accepted. The best answer to this would be that the Chief clearly undertook to do only what he could do and that as he could not commit the Administration to allow certain goods into the Protectorate free of duty it must be concluded that he merely promised not to make any tribal levy upon specified goods entering his country.

8. The next step will be to draw up a Mining Proclamation for the Protectorate, and taking the Northern Rhodesia Mining Law (Proclamation No. 5 of 1912*) as a basis I propose to refer briefly to certain alterations and additions which appear to me to be necessary, but I have not examined the Northern and Southern Rhodesian Laws in detail with a view to drafting a Proclamation for the Bechuanaland Protectorate.

9. *Section 4: Limits of Proclamation.*—It will be necessary to substitute a clause providing for the application of the proposed Bechuanaland Protectorate Mining Law to certain areas from time to time by notice in the *Gazette*.

10. *Section 6.*—In many instances in Bechuanaland the duties assigned to the Mining Commissioner could in the early stages of mining development be adequately discharged by the Resident Magistrates, and I suggest therefore that the words "Resident Magistrate or" should be inserted before the words "Mining Commissioner" wherever they occur in the Northern Rhodesia Law.

Licences would presumably be issued and registered by the Administration, and it would be the duty of the Magistrate or Mining Commissioner to satisfy himself that applicants were fit and proper persons to hold a licence. It should be expressly laid down that the Resident Commissioner reserves the right to refuse registration or to cancel licences without assigning any reason for doing so. In exercising this right he would be guided by reports upon individuals applying for licences or he may have reason to suspect that the holder of a licence is engaging in the liquor traffic or otherwise exercising a detrimental influence upon the natives. Even if he is satisfied that an applicant is reputable he might wish to refuse a licence if in his opinion there were already too many prospectors operating within a given area.

* Not printed here.

I had originally contemplated a fee of one pound per annum for licences for the first four or five years and thereafter an ever-increasing charge with the object of inducing prospectors to commence operations as soon as possible and to conclude them as soon as possible. Sir Drummond Chaplin is of opinion that it would be as much to the interest of the Company as it is to that of the Administration that steps should be taken to accelerate mineral development, but he thinks this result should be secured by levying a steeply-graded annual charge upon mining locations rather than upon prospecting licences. He considers that the Administration should grant every facility to prospectors throughout the period of twenty-five years. I am prepared to concede this point provided that a steeply-graded annual rental is imposed upon mining locations on the lines indicated later in this despatch, in order to secure rapid exploitation of mineral discoveries.

11. *Section 7 (1).*—Add at the end of the sub-section "or in the case of Native Reserves without the consent of the Resident Commissioner."

Sub-section (2).—Add after "timber" the words "or water" and insert a provision subjecting all ancillary rights in native reserves to the conditions and restrictions contained in Clause 4 of Swaziland Proclamation No. 13 of 1910,* i.e., "that the exercise of such rights shall be subject to such conditions and restrictions as the Resident Commissioner may from time to time deem necessary for the protection of the natives in the full and sufficient enjoyment, use and occupation of such areas, etc." It may be necessary to impose similar restrictions upon the exercise of ancillary rights in Crown lands where natives are in occupation or are grazing stock and where the supply of water may be very limited.

Sub-clauses (*a*) and (*c*) of Sub-section 2 of Section 7 stand; Sub-clause (*b*) should, however, be omitted.

12. *Section 8 (2) (a).*—Add after the word "without" the words "in respect of native areas the consent of the Resident Commissioner in writing and, in respect of privately-owned land, the consent of the owner or occupier, etc."

(*d*) Substitute "Resident Commissioner" for "Company, Administrator, etc."

Note.—It would be open to the Company to apply to the Resident Commissioner for the imposition of any special reservations in respect of land over which it holds rights.

13. *Section 14.*—The words "Resident Magistrate's Office or" should be inserted before the words "Mines Office" wherever they occur in sections of the Northern Rhodesia Law which are incorporated in the new Proclamation.

14. *Section 17.*—The words "Bechuanaland Protectorate Administration" should be substituted for the words "British South Africa Company."

15. *Section 20.*—Wherever the terms "High Court" or "a Judge" appear in any provision of the Rhodesian Law which is to be incorporated in the Protectorate Law the words "Courts of the Protectorate" should be substituted.

16. *Section 23.*—The provisions of this clause should, where native interests are involved, also be subjected to the conditions and restrictions contained in Section 4 of the Swaziland Proclamation No. 13 of 1910*—see remarks on Section 7 above.

17. *Section 24.*—This section is clearly not suited to the circumstances of the Bechuanaland Protectorate and the question of what provision, if any, will have to be substituted is a matter for careful consideration.

18. *Section 27 (1).*—The words "The Secretary for Mines" should be erased and the words "An Officer appointed by the Resident Commissioner for the purpose" substituted in their place. A new sub-clause might with advantage be added to this section stipulating that an agreed annual rental per acre should be charged in respect of all mining locations which, two years after registration, are not being worked on a scale that, in the opinion of the Resident Commissioner, would justify their retention by the owners as mining locations. A scale of fees for claim licences is laid down in Section 59 of the Northern Rhodesian Law. I do not, however, recommend the imposition of any serious charge upon mining locations during the first two years after registration, but during the third year a substantial rental should be demanded which might be increased on a steeply-graded scale for each subsequent year until the location is surrendered or a prescribed maximum rental is reached. The object of this graded rental is to discourage the registered owners of locations from leaving their mining rights unexploited until the very last moment, that is to say, until shortly before the end of the twenty-five year period. If they choose to leave their mining rights so unexploited they will be compelled to pay an ever-increasing rental.

* Not printed here.

In addition it might be advisable to incorporate in the Protectorate Law the provisions of Sections 24-30 of the Southern Rhodesia Mining Law. Sir Drummond Chaplin informs me that the Company would be just as anxious as the Government to see mineral rights exploited with the least possible delay. A system of steeply-graded rentals for locations would obviate the difficulty of imposing a limit on the period during which locations should be allowed to remain in existence after the expiration of the period of twenty-five years, since no one would wish to continue paying interminably a large rental for a location, and if a profitable mine were discovered it would obviously be out of the question to close down such a mine during its lifetime merely because the time limit had been reached.

19. *Section* 49 (1).—After the words "private land" the words "or Native Reserve" should be inserted. This section might also be subjected, in so far as Native interests are concerned, to the provisions of Clause 4 of the Swaziland Proclamation No. 13 of 1910.*

20. *Section* 50 (2).—The word "Administration" should be substituted for the words "British South Africa Company."

21. *Section* 54.—The words "in respect of private land" might be added after the second word "may" and at the conclusion of the section add "in respect of a Native Reserve the Resident Commissioner shall decide the extent to which natives shall be required to allow any person, who has the right to mine for any mineral on or under any land, the exclusive use of any portion of such land and shall fix the terms of rental which shall be paid for the same."

22. *Section* 55.—The words "to any individual or Company" should be substituted for the words "by the British South Africa Company."

23. *Section* 59.—I am opposed to the inclusion of any provision on these lines in the Protectorate Proclamation as I contemplate that after expiration of two years claim licence fees shall be paid whether or not working for profit has commenced. A general principle of the Proclamation should be to obtain revenue from non-producing areas which are being left idle as well as from those which are being worked.

24. *Section* 71 (1).—After the words "The name" the words "nationality, race or tribe" should be added. Provision might also be made under this section prohibiting the employment of foreign natives except as overseers or when the Resident Commissioner is satisfied that their services are essential to the efficient conduct of mining operations.

Provision should also be made for the repatriation without expense to the Administration of all imported Europeans and foreign natives who, having been in the employment of a licensed claim-holder, have been discharged from such employment or who have voluntarily left the service of a licensed claim-holder.

25. *Section* 89.—For the words "British South Africa Company" the words "Protectorate Administration" should be substituted, and for the word "Administrator" substitute the words "Resident Commissioner."

26. I would be prepared, subject to any representations the Company may wish to offer, to accept for the Protectorate the scale of royalties laid down in Southern Rhodesia Ordinance No. 10 of 1907* as amended by No. 26 of 1914.* I am doubtful whether it would be quite fair to ask the Company to contribute a proportion of its profits from royalties for the general benefit of the Native Reserves. I would prefer that the Administration should make use of its reserved rights of general taxation in order to raise the income tax or to impose a special profit tax on income derived from mining sources, and a proportion of the revenue so obtained might then be set aside for the benefit of the natives concerned. This arrangement would have the advantage of securing a contribution not only from the royalty owner but also from the companies working the minerals, who would of course be making the greater proportion of the profits earned. I consider that it would not be necessary to make any additional personal payment to the Chiefs.

27. I agree that it would be advantageous that the Proclamation should contain provision for making special grants in much the same form as they are granted in Northern Rhodesia. It would certainly be a great advantage from an administrative and native point of view that prospectors should be under the control of, and be for the most part engaged by, reputable companies.

28. If it is considered that the proposed revised Khama Concession provides in itself adequate protection for natives against the exercise of ancillary rights by

* Not printed here.

the concessionaires I would be prepared to agree to prospecting operations being allowed in the Bamangwato Reserve in advance of the issue of a Mining Proclamation, provided that the importation of foreign natives was prohibited. Provisions governing the employment of imported labour are recommended for incorporation in the proposed Protectorate Proclamation and for that and other reasons I consider that the promulgation of the Proclamation should be expedited.

29. It will be seen that the Resident Commissioner is of the opinion that the revenue derived from mining sources will be insufficient to meet the cost of administering the Proclamation. I am, however, inclined to doubt that mining operations will be conducted on any considerable scale, and I do not anticipate that it will be necessary to increase the police force or to appoint special officials for the first few years provided the safeguards governing the exercise of ancillary rights (paragraph 11) and the employment and repatriation of imported labour (paragraph 24) are rigidly enforced. The natives in remote places could, I think, be relied upon to complain of any attempt to deprive them of water which they needed for their stock and to report the presence of discharged or troublesome foreign natives. If, however, valuable minerals are discovered mining on a larger scale will follow and the revenue will increase in some proportion to the expense of administering the Mining Law. But none of the neighbouring Governments has suffered financially as a result of mineral development and if the mining companies succeed in making money the Administration can always have recourse to a profits tax or rely upon income tax to reimburse the Treasury for any losses that may have been sustained.

30. Sir Drummond has asked that he may be provided on arrival in London with a copy of the recommendations made by the High Commissioner in this despatch which, as already mentioned, were the subject of discussion with him. I see no objection to this request being complied with, though it would be necessary to omit certain passages such as those dealing with the possible effect upon the "free of duty" clause of the Imperial Government's recognition of the Khama Concession and the suggestion that it might be necessary to withhold a prospecting licence in respect of a given area when it is considered that there are already too many prospectors operating within that area.

I have, &c.,
ATHLONE,
High Commissioner.

Enclosure 1 in No. 58.

(Confidential. H.C. 211.)

Resident Commissioner's Office, Mafeking,
8th May, 1926.

My Lord,

I have the honour to acknowledge the receipt (*a*) of your despatch Confidential No. 602, of the 30th April,* with enclosures, regarding the position of the British South Africa Company in the Bechuanaland Protectorate, and (*b*) of your urgent telegram of the 4th May* directing me to send, so as to reach Cape Town at latest by Tuesday next, any observations which I am able to make upon the questions dealt with in the correspondence enclosed with your above-mentioned despatch.

It is due by me to the Native Chiefs and people of the Bechuanaland Protectorate to express the view once more that all Concessions in Native Reserves should be abolished if possible.

Apart from the grounds which I gave for this in my despatch No. 220, of the 2nd June, 1924,† on the subject of the Linchwe Concession, there are the further reasons adduced by the Secretary of State in the paragraph before last of his Confidential cablegram of the 22nd April,‡ i.e., possible interference with the natives' grazing ground, and, I would add "with their scanty water supplies and their women."

If, notwithstanding this, it should be found impossible to terminate existing Concessions in Native Reserves, then I would observe, in regard to the general proposals set forth in Your Excellency's despatch Confidential (2), of the 5th June, 1925,§ to the Secretary of State, that proposals II to VII and proposal X seem fair and reasonable, substituting "Northern Rhodesia" for "Southern Rhodesia" as regards II, but that, in so far as proposal I is concerned, I consider that the period

* Not received. † Enclosure 1 in No. 38. ‡ No. 53. § No. 46.

of twenty-five years is much too long for "due diligence" where the existing Native Reserves and any others which may hereafter be proclaimed are concerned, and that the period should be reduced to ten years in the case of Native Reserves—ten years within which the Company would, subject to any rights conferred at a prior date on any other person or body of persons, be at liberty (*a*) to prospect for precious stones and minerals over the land in respect of which it now holds Concessions and (*b*) to mark out one or more mining areas, not to exceed in the aggregate such definite number of square miles as His Majesty's Government may decide upon as fair and reasonable, bearing in mind the requirements and general interests of the natives, and that, at the expiration of the ten years these Concessions should, if not taken advantage of by the Company, lapse for ever.

Should the Company, on the other hand, mark out during that period a mining area or mining areas, I think it should be stipulated that except for reasons beyond the control of the Company, mining operations in such areas shall be carried on without interruption during the life of a mine, and that so soon as a mine is abandoned as exhausted, or work is stopped contrary to the above stipulation, not only the surface rights but all other rights in respect of that particular mine shall revert to the owners.

I would eliminate proposal VIII, relating to the granting, after a certain period, of new limited Concessions in Native Reserves and would not consider at all resuscitating in Native Reserves any Concession which has expired or been cancelled.

Proposal IX: Having no experience in mining matters, I am not in a position to say whether payment to the Company, as compensation for the loss of its preferential rights, of one-fifth of the royalties accruing would be fair and equitable.

Before any of these proposals are given effect to, the Chiefs affected, and their people, would of course first have to be consulted and to be induced to accept any proposed alterations in the existing Agreements.

£300 per annum for a concession such as the Khama Concession, even in a modified form such as is now suggested, is a ridiculously small sum for the Company to pay to a Chief; in fact, Khama realized it and once said to me, "I was young and foolish when I granted that Concession," and it is possible that if the Chiefs were offered better terms they might be induced to consider favourably any new proposals.

Apart from this suggestion I am really at a loss to know how to remove the apprehensions of the natives in regard to interference with their grazing, waters, timber and women, *et cetera*, except by telling them that the Government will continue to watch over their interests and protect them, and in order to fulfil this promise it will, when the Company begins operations, be necessary to have a much increased staff, especially in so far as the Police and Treasury are concerned, a Mining Commissioner, Mine Inspectors, etc.; would the revenue which would accrue from their altered state of affairs be sufficient to meet this further expenditure?

I cannot recommend the importation, into Native Reserves, of any native labour from outside: this is sure to lead to friction and endless trouble with the local natives who should be given the preference and would no doubt prefer to work in their own country if wages such as they obtain at the Johannesburg mines are offered to them.

I have, &c.,
J. Ellenberger,
Resident Commissioner.

His Excellency,
The High Commissioner,
Cape Town.

Enclosure 2 in No. 58.

MINERAL CONCESSION GRANTED BY THE CHIEF KHAMA TO THE BRITISH SOUTH AFRICA COMPANY.

Agreement for Mineral Concession in the Chief Khama's Country.

AGREEMENT made by and between [Khama,] Chief of the Bamangwato Nation, hereinafter called the said Chief, of the one part, and the British South Africa Company, having its head office in London and branch office in South Africa, and being represented in this behalf by [the Honourable Maurice Gifford,] hereinafter called the said grantees, of the other part.

1. The said Chief, with the consent of his councillors and people, gives to the said grantees the sole and exclusive right for a period of 25 years to prospect for precious stones, minerals and metals throughout [the territory of which he is the Chief,] the Bamangwato Reserve, provided that such prospecting shall not be allowed in any road, nor within 200 yards of any village, kraal, house, or hut, nor within 30 miles of the town of [Palapye,] Serowe, nor upon any land under cultivation, or required for the purpose of irrigation, without the written consent of the Resident Commissioner, given after consultation with the said Chief, his heirs, successors, or assigns [being first had and obtained.]

And the said grantees undertake to pay to the said Chief, his heirs, successors, or assigns, the sum of £25 per month, payable in advance [on the discovery in payable quantities of any gold, precious stones, minerals or metals.]

2. And the sole and exclusive mining right and concession is hereby given by the said Chief to the said grantees, to [search for,] work, and win precious stones, gold, silver, platinum, copper ore, and all other minerals over the whole of the [country known as Khama's country] Bamangwato Reserve, for a period of 25 years and thereafter within such portions of the Reserve as may, at the expiration of the said period, be registered as Mining Locations under any mining Law of the Protectorate for the time being in force, [is hereby given by the said Chief to the said grantees,] provided that such working and winning shall not interfere with any road, village, kraal, or house, hut or cultivated or irrigated land, nor within 30 miles of the town of [Palapye,] Serowe, without the written consent of the Resident Commissioner given after consultation with the said Chief, his heirs, successors and assigns [being first had and obtained,] and previous payment of compensation to persons disturbed or about to be disturbed, to be assessed by three appraisers, one of whom shall be appointed by the said Chief, his heirs, successors, or assigns, one by the said grantees, and the third chosen by the [other two,] Government, shall be forthcoming, and the Resident Commissioner, after consultation with the said Chief [reserves to himself] shall have the full right of refusal to allow any such prospecting or mining as may interfere with any such road, village, kraal, house, hut, or cultivated or irrigated land or within a distance of 30 miles from the town of [Palapye,] Serowe. And the said Chief further hereby undertakes and agrees, for himself, his heirs, successors and assigns, not to give or grant any other mining concession or right whatsoever to any private individual, co-partnership, company or syndicate, over any part of [his country] the Bamangwato Reserve, including the 30 mile area around the town of [Palapye,] Serowe, over which no prospecting is allowed [by the said Chief to the said grantees] in terms of paragraph 1, nor allow any such persons or corporations to search for or win any precious stones, metals, or minerals anywhere throughout the [territory of which he is Chief,] Bamangwato Reserve including the aforementioned 30 mile area around the town of [Palapye,] Serowe.

3. And the said grantees promise to pay or cause to be paid punctually the aforesaid sum of money to the Chief, his heirs, successors or assigns, as afore agreed upon in terms of paragraph 1: failing the receipt of such payment the Chief, his heirs, successors or assigns shall give the representative of the Company in South Africa due notice thereof, and if the said representative shall then decline to pay, the Chief, his heirs, successors or assigns shall have the right to cancel the said concession without further notice, if he or they shall think fit, and the same shall cease and determine, and the said rental shall no longer be payable as aforesaid, and the said grantees shall on payment of all rent due to date, be at liberty to remove from the land of the said Chief all machinery and plant belonging to them, and the materials of all buildings or structures belonging to or erected by the said grantees.

4. The said Chief further gives to the said grantees the right to cut wood and use water and other easements free of charge within the limits of the said Concession, but only as such wood, water and other easements may be actually required for carrying on mining and prospecting operations, and provided that the exercise of such ancillary rights shall be subject to such conditions and restrictions as the Resident Commissioner, after consultation with the said Chief, may from time to time deem necessary for the protection of the natives in the full and sufficient enjoyment, use and occupation of their reserve, and the said Chief reserves to himself, his heirs, successors and assigns all timber rights of his country, including all such timber and trees as may be adjacent to any prospecting or mining operations.

5. The said grantees shall be allowed, subject to such conditions and restrictions as the Resident Commissioner, after consultation with the said Chief, may from time to time deem necessary for the protection of the natives in the full and sufficient enjoyment, use and occupation of their reserve, to send into the [said Chief's country] Bamangwato Reserve such prospectors, engineers, and European labourers as they may require for mining purposes, and to import [free of duty] all such plant and machinery as they may also require, as well as materials of all kinds, provisions and clothing in connexion with their mining operations.

6. And the said grantees further promise and agree to introduce into the [territory of the said Chief] Bamangwato Reserve only workmen of good character and to do all in their power to prevent and discourage the introduction of intoxicating liquors into the country of the said Chief and to give effect therein to all laws, rules, and regulations against the supply of intoxicating liquor to his people, and all other natives and residents in his country.

7. [And] Subject to such conditions and restrictions as the Resident Commissioner, after consultation with the Chief, may from time to time deem necessary for the protection of the natives in the full and sufficient enjoyment, use and occupation of their reserve, the said Chief allows to the said grantees, free of all rent and charges, such land as may be necessary for mining purposes, and for such buildings as [may be required in] the Resident Commissioner, after consultation with the said Chief, may consider necessary for the carrying on of prospecting and mining operations, [but] and the said Chief reserves to himself all land rights of his country, and it is hereby agreed that all such land as may be necessary and used for mining or building purposes as afore agreed upon remains the property of the said Chief, his heirs, successors and assigns, nor do any such building or mining operations constitute any claim or title to any such land on the part of the said grantees.

The said Chief hereby lastly declares that the foregoing is the only mineral concession at present in force, and he binds himself to the said grantees in terms of paragraph 2 that he will not grant any other mining concession over his territory to any other persons whomsoever, whilst this agreement lasts.

[This done and signed at Palapye this 25th day of July, 1893, in the presence of the subscribing witnesses.]

This agreement supersedes that done at Palapye on the 25th day of July, 1893, which is hereby cancelled.

D. 8348

No. 59.

THE HIGH COMMISSIONER to THE SECRETARY OF STATE.

(Received 3rd August, 1926.)

(Confidential.)

SIR, High Commissioner's Office, Cape Town, 16th July, 1926.

I HAVE the honour to acknowledge the receipt of your despatch No. 108 of the 30th March* with reference to the application of Balkis, Limited, for the grant of prospecting and mining rights in certain Crown lands in the Bechuanaland Protectorate.

2. I enclose herewith a copy of correspondence with the Resident Commissioner regarding this application, including a despatch in which Colonel Ellenberger has submitted his observations thereon.

3. It has occurred to me that if the Balkis Company attaches importance to obtaining mining rights over the area of Crown land in question, this application might perhaps be made the basis of an arrangement whereby in consideration of the Government consenting to its being granted, the Balkis Company might be persuaded to relinquish to the Crown any mining rights which it may claim to possess over the Bamalete Native Reserve by virtue of the Gaseitsiwe Concessions. In this connexion I enclose, for your consideration, a copy of a further despatch from the Acting Resident Commissioner submitting observations upon the Departmental Memorandum of which an extract accompanied your Confidential despatch of the 3rd March.†

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* No. 51. † No. 49.

4. It seems to me that while the arguments set forth by Colonel Daniel may not perhaps be regarded as conclusive, there is nevertheless some doubt whether the concessions of mining rights granted by Gaseitsiwe as Chief of the Bangwaketsi and now owned by the Balkis Company can be held to extend over the Bamalete Reserve, and it is possible that in all the circumstances the Balkis Company might be willing to negotiate on the basis which I have indicated.

5. As regards the preferential rights of the British South Africa Company mentioned in the second paragraph of your despatch under acknowledgment, perhaps the position of the two Companies in regard to their respective mining rights might also be settled on somewhat similar lines, viz., the British South Africa Company might be willing to agree to give up its preferential rights, so far as mining is concerned, in the Crown land over which the Balkis Company desires to obtain mining rights in return for the surrender by the Balkis Company of any mining rights which it may possess, by virtue of its concessions, in the land now included in the Lobatsi Block, which the Chartered Company would doubtless wish to have freed from concessionary rights.

6. If some such arrangements should be deemed feasible you might perhaps also consider whether it would be practicable, in the course of negotiations, to obtain from the British South Africa Company the grant to the Crown of the portion of land in the Lobatsi Block known as the Company's Reserve. The area of land to which I refer is, as shown on the enclosed sketch,* close to Lobatsi railway station, and if we could obtain this piece of ground, which adjoins the Bangwaketsi Native Reserve, I would propose that it should be set aside for use and occupation by natives, e.g., by the Bamalete, whose present reserve is inadequate for their needs—see my despatch No. 321 of the 25th June.†

I have, &c.,
ATHLONE,
High Commissioner.

Enclosure 1 in No. 59.

(Bechuanaland Protectorate.)
(No. 671.)

High Commissioner's Office Cape Town.
23rd April, 1926.

SIR,

I HAVE the honour to transmit herewith, for your consideration and observations, a copy of a despatch‡ from the Secretary of State forwarding a copy of correspondence (with map) with Messrs. Balkis Limited regarding an application by them for the grant of prospecting and mining rights in certain Crown lands in the Bechuanaland Protectorate.

I shall be obliged if you will return the map with your reply.

I have, &c.,
ATHLONE,
High Commissioner.

His Honour
The Resident Commissioner
of the Bechuanaland Protectorate.

(H. C. 168.)

Resident Commissioner's Office, Mafeking.
26th April, 1926.

MY LORD,

I HAVE the honour to acknowledge the receipt of Your Excellency's despatch No. 671 of the 23rd April, transmitting for my consideration a copy of the Secretary of State's despatch No. 108 of the 30th March,‡ with enclosures, regarding an application by Messrs. Balkis Limited for the grant of prospecting and mining rights in certain Crown lands in the Bechuanaland Protectorate.

The policy of this Administration has always been to discourage applications for permission to prospect on Crown lands and I regret my inability to recommend a departure from that policy or the granting of any mining rights on such lands until a mining law for the Territory has been promulgated.

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* Not reproduced. † 7576/26: not printed. ‡ No. 51.

I should add that two years ago there were 85 native families and 4,000 odd head of cattle within the area alluded to by Messrs. Balkis Limited, and that, except where there is rain water in the Molopo river, w.ter within that area is to be found only in pits dug by the natives for themselves and their cattle.

I am not clear what the Secretary of the Balkis Company Limited means when he says in his letter of the 16th March* that the area referred to therein adjoins on the East Baralong lands which are "under the control of the British South Africa Company."

The map which accompanied Your Excellency's despatch under reply is returned herewith as directed.

I have, &c.,
J. ELLENBERGER,
Resident Commissioner.

His Excellency
The High Commissioner,
Cape Town.

TELEGRAM FROM THE HIGH COMMISSIONER, CAPE TOWN, TO THE RESIDENT COMMISSIONER, MAFEKING.

3RD MAY, 1926. Please inform me at your earliest convenience whether any active prospecting operations have at any time been carried on in the Bamalete Reserve under the auspices of the Balkis Company.

TELEGRAM FROM THE RESIDENT COMMISSIONER, MAFEKING, TO THE HIGH COMMISSIONER, CAPE TOWN.

5TH MAY, 1926. Referring to Your Excellency's telegram 3rd May, as far as can be traced two persons mentioned in my despatches 497 of 3rd December,† and 529 of 15th December,‡ were the only holders of licences from Balkis Limited to prospect in Bamalete Reserve. No active operations were carried on by latter of these but former was prospecting for about ten days in October-November last and sent some samples to Johannesburg.

Enclosure 2 in No. 59.

(H. C. 242.)
(Confidential.)

Resident Commissioner's Office, Mafeking.
2nd June, 1926.

MY LORD,

I HAVE the honour to acknowledge the receipt of Your Excellency's Confidential despatch No. 503 of the 23rd April regarding a licence issued by the Balkis Company Limited to Mr. R. Rowland, under which the latter claims the right to prospect in the Bamalete Reserve, and, in reply, I would observe that the extract from the Departmental Memorandum dated 20th November, 1924,§ does not include the fact that the Bamalete had in 1881 conquered the territory in question (vide Clause 7 of Colonel Ellenberger's Memorandum annexed to the Resident Commissioner's Confidential despatch No. 259 both dated 21st August, 1923‖), nor does this Memorandum give prominence to the conditions under which the Agreement of 26th December, 1885, was obtained.

If it is admitted that the Bamalete were by right of conquest in lawful possession of what is now the Bamalete Reserve at the time the Agreement of the 26th December, 1885, was signed (and I have been informed by the uncle of the present Chief that he remembers the battle in question taking place and that the ground has never since been reconquered) then it would seem that the question as to whether the Bamalete Reserve was a part of Gaseitsiwe's territory at the time of the two Gaseitsiwe Concessions, rests mainly on the legal validity of this Agreement of the 26th December, 1885.

* No. 50. † Enclosure in No. 47. ‡ Enclosure in No. 48. § Enclosure in No. 49.
‖ Enclosure 2 in No. 17.

From Clauses 3 and 4 of the letter of instructions given by the Administrator of British Bechuanaland to Mr. Bethell on the 23rd December, 1885 [page 248 of Blue Book No. (C—4643)], there can be little doubt that this Agreement was intended to be a free and voluntary one between Chief Gaseitsiwe and Chief Ikaneng (who was acting for his father Mokgosi).

There is the following evidence that this Agreement was not entered into voluntarily by Ikaneng, viz.:—

Mr. Bethell's admission in Clause 3 of his report of the 27th December, 1885 [to be found on page 249 of Blue Book (C—4643)];

Ikaneng's statement confirmed by Mr. Shulenburg (the witness to the Agreement) in the letter of 23rd July, 1888 [on page 41 of Blue Book (C—5524)], also the extract of the 12th July, 1888, which was enclosed with this letter;

Ikaneng's refusal from the first to pay oxen direct to Gaseitsiwe, thereby repudiating his (Gaseitsiwe's) suzerainty over him.

It would seem therefore that as the Agreement was not voluntarily entered into by Ikaneng it was invalid as a legal instrument and was never binding on the Bamalete people.

I would suggest, for your Excellency's consideration, that the Balkis Company might be informed that after a careful scrutiny of the Blue Books and other evidence the Administration is not at all sure that the Bamalete Reserve formed a part of Gaseitsiwe's territory at the time the two Gaseitsiwe Concessions were granted and that the Administration is prepared to enter into conversation with them "without prejudice" with a view to having the matter decided, or alternately the Administration is prepared to submit the question to arbitration under the Cape Act No. 29 of 1898, with slight alterations as to definitions, et cetera.

The Blue Books which accompanied your despatch under acknowledgment are returned herewith.

I have, &c.,
R. M. DANIEL,
Acting Resident Commissioner.

His Excellency
The High Commissioner,
Cape Town.